

AMENDED IN SENATE JUNE 29, 2000

AMENDED IN SENATE JUNE 7, 2000

AMENDED IN ASSEMBLY APRIL 13, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

**No. 2898**

**Introduced by Committee on Revenue and Taxation (Knox  
(Chair), Alquist, Aroner, Ducheny, Honda, and Romero)**

March 13, 2000

---

---

An act to amend Sections 6456, 6592, 6832, 7076.7, 7091, 7657, 8269, 8877 9033, 9269, 11253, 11597, 30282, 30354, 30458.9, 32255, 32389, 32469, 38452, 38504, 40102, 40167, 40209, 41096, 41127.6, 41169, 43157, 43448, 43520, 45155, 45609, 45865, 46156, 46464, 46620, 50112.2, 50138.6, 50156.9, 55044, 55209, 55330, 60209, 60493, and 60630 of, and to add Sections 6704, 6832.6, 7056.6, 7658.2, 8128.1, 8257, 8756, 8958, 9033.5, 9152.1, 9255.2, 11253.5, 11274, 11453, 11553.5, 11656, 11657, 30189, 30316, 30354.5, 30362.1, 30455.5, 32258, 32387.5, 32389.5, 32402.1, 32455.5, 38406, 38503.5, 38504.5, 38602.5, 38707, 38708, 40066, 40112.1, 40156, 40167.5, 40176, 41057, 41099, 41101.1, 41123.6, 41127.7, 41132, 43161, 43444.3, 43448.5, 43452.1, 43506, 45158, 45605.5, 45609.5, 45652.1, 45855.5, 46159, 46407, 46464.5, 46502.1, 46606, 50112.6, 50136.5, 50138.7, 50140.1, 50155.5, 55047, 55205.5, 55209.5, 55222.1, 55305, 60213, 60408, 60493.5, 60522.1, and 60609.5 to, the Revenue and Taxation Code, relating to taxation.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2898, as amended, Committee on Revenue and Taxation. Taxation: State Board of Equalization.

The State Board of Equalization administers various taxes.

This bill would make various changes to those taxes, including, among other things, providing relief of tax liability for an innocent spouse, providing for a crime and fines for disclosure of specified information, providing for the suspension of certain periods of limitations for a person who is financially disabled, *extending the managed audit program*, and would make various technical and clarifying changes to administrative provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6456 of the Revenue and  
2 Taxation Code is amended to read:

3 6456. (a) Under regulations prescribed by the board,  
4 if:

5 (1) A tax liability under this part was understated by  
6 a failure to file a return required to be filed under this  
7 part, by the omission of an amount properly includable  
8 therein, or by erroneous deductions or credits claimed  
9 on a return, and the understatement of tax liability is  
10 attributable to one spouse; or any amount of the tax  
11 reported on a return was unpaid and the nonpayment  
12 of the reported tax liability is attributable to one spouse,

13 (2) The other spouse establishes that he or she did  
14 not know of, and had no reason to know of, that  
15 understatement or nonpayment, and

16 (3) Taking into account whether or not the other  
17 spouse significantly benefited directly or indirectly



1 from the understatement or the nonpayment and  
2 taking into account all other facts and circumstances,  
3 it is inequitable to hold the other spouse liable for the  
4 deficiency in tax attributable to that understatement or  
5 nonpayment,

6 then the other spouse shall be relieved of liability for tax  
7 (including interest, penalties, and other amounts) to the  
8 extent that the liability is attributable to that  
9 understatement or nonpayment of tax.

10 (b) For purposes of this section, the determination of  
11 the spouse to whom items of understatement or  
12 nonpayment are attributable shall be made without  
13 regard to community property laws.

14 (c) This section shall apply to all calendar quarters  
15 subject to the provisions of this part, but shall not apply  
16 to any calendar quarter that is more than five years from  
17 the final date on the board-issued determination, five  
18 years from the return due date for nonpayment on a  
19 return, or one year from the first contact with the spouse  
20 making a claim under this section; or that has been closed  
21 by res judicata, whichever is later.

22 (d) For purposes of paragraph (2) of subdivision (a),  
23 “reason to know” means whether or not a reasonably  
24 prudent person would have had reason to know of the  
25 understatement or nonpayment.

26 (e) For purposes of this section, with respect to a  
27 failure to file a return or an omission of an item from the  
28 return, “attributable to one spouse” may be determined  
29 by whether a spouse rendered substantial service as a  
30 retailer of taxable items to which the understatement is  
31 attributable. If neither spouse rendered substantial  
32 services as a retailer, then the attribution of applicable  
33 items of understatement shall be treated as community  
34 property. An erroneous deduction or credit shall be  
35 attributable to the spouse who caused that deduction or  
36 credit to be entered on the return.

37 (f) Under procedures prescribed by the board, if,  
38 taking into account all the facts and circumstances, it is  
39 inequitable to hold the other spouse liable for any unpaid  
40 tax or any deficiency (or any portion of either)

1 attributable to any item for which relief is not available  
2 under subdivision (a), the board may relieve the other  
3 spouse of that liability.

4 SEC. 2. Section 6592 of the Revenue and Taxation  
5 Code is amended to read:

6 6592. (a) If the board finds that a person's failure to  
7 make a timely return or payment is due to reasonable  
8 cause and circumstances beyond the person's control, and  
9 occurred notwithstanding the exercise of ordinary care  
10 and the absence of willful neglect, the person shall be  
11 relieved of the penalties provided by Sections 6476, 6477,  
12 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, and 7051.2.

13 (b) Except as provided in subdivision (c) any person  
14 seeking to be relieved of the penalty shall file with the  
15 board a statement under penalty of perjury setting forth  
16 the facts upon which he or she bases his or her claim for  
17 relief.

18 (c) The board shall establish criteria that provides for  
19 efficient resolution of requests for relief pursuant to this  
20 section.

21 SEC. 3. Section 6704 is added to the Revenue and  
22 Taxation Code, to read:

23 6704. (a) Notwithstanding Article 7 (commencing  
24 with Section 706.151) of Chapter 5 of Title 9 of Part 2 of  
25 the Code of Civil Procedure, if the board determines  
26 upon receiving information from a retailer or other  
27 person liable for any amount under this part that the  
28 person's employer withheld earnings for taxes pursuant  
29 to Section 6703 and failed to remit the withheld earnings  
30 to the board, the employer shall be liable for the amount  
31 not remitted. The board's determination shall be based  
32 on payroll documents or other substantiating evidence  
33 furnished by the person liable for the tax.

34 (b) Upon its determination, the board shall mail notice  
35 to the employer at its last known address that upon failure  
36 to remit the withheld earnings to the board within 15 days  
37 of the date of its notice to the employer, the employer  
38 shall be liable for that amount which was withheld and  
39 not remitted.

1 (c) If the employer fails to remit the amount withheld  
2 to the board upon notice, that amount for which the  
3 employer is liable shall be determined, collected, and  
4 paid as though it were a tax deficiency. The amount may  
5 be assessed at any time prior to seven years from the first  
6 day that the unremitted amount, in the aggregate, was  
7 first withheld. Interest shall accrue on that amount from  
8 the first day that the unremitted amount, in the  
9 aggregate, was first withheld.

10 (d) When the determination against the employer is  
11 final and due and payable, the person's account shall be  
12 immediately credited with an amount equal to that  
13 determined amount as though it were a payment  
14 received by the board on the first date that the  
15 unremitted amount, in the aggregate, was first withheld  
16 by the employer.

17 (e) Collection against the person liable for the tax is  
18 stayed for both the following amount and period:

19 (1) An amount equal to the amount determined by the  
20 board under subdivision (a).

21 (2) The earlier of the time the credit is applied to the  
22 person's account pursuant to subdivision (d) or the  
23 determination against the employer is withdrawn or  
24 revised and the person is notified by the board thereof.

25 (f) If under this section an amount that was withheld  
26 and not remitted to the board is final and due and payable  
27 by the employer and credited to the person's account, this  
28 remedy shall be the exclusive remedy for the person to  
29 recover that amount from the employer.

30 (g) This section shall apply to determinations made by  
31 the board on or after the effective date of the act adding  
32 this section.

33 SEC. 3.5. Section 6832 of the Revenue and Taxation  
34 Code is amended to read:

35 6832. (a) The board may, in its discretion, enter into  
36 a written installment payment agreement with a person  
37 for the payment of any taxes due, together with interest  
38 thereon and any applicable penalties, in installments over  
39 an agreed period. With mutual consent, the board and the  
40 taxpayer may alter or modify the agreement.

1 (b) Upon failure of a person to fully comply with the  
2 terms of an installment payment agreement with the  
3 board, the board may terminate the agreement by  
4 mailing a notice of termination to the person. The notice  
5 shall include an explanation of the basis for the  
6 termination and inform the person of his or her right to  
7 request an administrative review of the termination.  
8 Fifteen days after the mailing of the notice, the  
9 installment payment agreement shall be void, and the  
10 total amount of the tax, interest, and penalties due shall  
11 be immediately payable.

12 (c) The board shall establish procedures for an  
13 administrative review for persons requesting that review  
14 whose installment payment agreements are terminated  
15 under subdivision (b). The collection of taxes, interest,  
16 and penalties that are the subject of the terminated  
17 installment payment agreement may not be stayed  
18 during this administrative review process.

19 (d) Subdivision (b) shall not apply to any case where  
20 the board finds collection of the tax to be in jeopardy.

21 (e) Except in the case of fraud, if an installment  
22 payment agreement is entered into within 45 days from  
23 the due date of the tax, and the person complies with the  
24 terms of the installment payment agreement, the board  
25 shall relieve the penalty imposed pursuant to Section  
26 6565.

27 SEC. 4. Section 6832.6 is added to the Revenue and  
28 Taxation Code, to read:

29 6832.6. In the case of liability for use tax arising from  
30 the board's auxiliary collection provisions pursuant to  
31 Article 3 (commencing with Section 6291) of Chapter 3.5,  
32 or use tax liability arising from purchases described in  
33 Section 6405, the board shall provide notice to purchasers  
34 in simple and nontechnical language of its authorization  
35 under Section 6832 to enter into an agreement to accept  
36 the payment of use tax in installments. The notice shall be  
37 mailed to purchasers concurrently with the mailing of the  
38 return, notice of determination, or notice of  
39 redetermination.

1 SEC. 5. Section 7056.6 is added to the Revenue and  
2 Taxation Code, to read:

3 7056.6. (a) Except as otherwise provided by law, any  
4 person who is engaged in the business of preparing, or  
5 providing services in connection with the preparation of,  
6 returns under Chapter 5 (commencing with Section  
7 6451), or any person who for compensation prepares any  
8 such return for any other person, and who knowingly or  
9 recklessly does either of the following, shall be guilty of  
10 a misdemeanor, and, upon conviction thereof, shall be  
11 fined not more than one thousand dollars (\$1,000) or  
12 imprisoned no more than one year, or both, together with  
13 the costs of prosecution:

14 (1) Discloses any information furnished to him or her  
15 for, or in connection with, the preparation of the return.

16 (2) Uses that information for any purpose other than  
17 to prepare, or assist in preparing, the return.

18 (b) Subdivision (a) shall not apply to disclosure of  
19 information if that disclosure is made pursuant to the  
20 person's consent or pursuant to a subpoena, court order,  
21 or other compulsory legal process.

22 SEC. 5.5. *Section 7076.7 of the Revenue and Taxation*  
23 *Code is amended to read:*

24 7076.7. This article shall remain in effect only until  
25 January 1, ~~2001~~ 2003, and as of that date is repealed;  
26 however, any managed audit commenced pursuant to  
27 Section 7076.3 before January 1, ~~2001~~ 2003, may be  
28 completed by the board thereafter and the person whose  
29 account is audited shall remain eligible for the interest  
30 rate computation specified in Section 7076.5.

31 SEC. 6. Section 7091 of the Revenue and Taxation  
32 Code is amended to read:

33 7091. (a) Every taxpayer is entitled to be reimbursed  
34 for any reasonable fees and expenses related to a hearing  
35 before the board if all of the following conditions are met:

36 (1) The taxpayer files a claim for the fee and expenses  
37 with the board within one year of the date the decision of  
38 the board becomes final.

39 (2) The board, in its sole discretion, finds that the  
40 action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 1999.

SEC. 7. Section 7658.2 is added to the Revenue and Taxation Code, to read:

7658.2. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and



(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section, or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

SEC. 8. Section 7657 of the Revenue and Taxation Code is amended to read:

7657. (a) If the board finds that a person’s failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care

1 and the absence of willful neglect, the person may be  
2 relieved of the penalty provided by Sections 7655, 7659.5,  
3 7659.6, 7660, and 7713.

4 (b) Except as provided in subdivision (c), any person  
5 seeking to be relieved of the penalty shall file with the  
6 board a statement under penalty of perjury setting forth  
7 the facts upon which he or she bases his or her claim for  
8 relief.

9 (c) The board shall establish criteria that provides for  
10 efficient resolution of requests of relief pursuant to this  
11 section.

12 SEC. 9. Section 8128.1 is added to the Revenue and  
13 Taxation Code, to read:

14 8128.1. (a) The limitation period specified in Section  
15 8128 shall be suspended during any period of a person's  
16 life that the person is financially disabled.

17 (b) (1) For purposes of subdivision (a), a person is  
18 financially disabled if the person is unable to manage his  
19 or her financial affairs by reason of medically  
20 determinable physical or mental impairment of the  
21 person which can be expected to result in death or which  
22 has lasted or can be expected to last for a continuous  
23 period of not less than 12 months. A person shall not be  
24 considered to have an impairment unless proof of the  
25 existence thereof is furnished in the form and manner as  
26 the board may require.

27 (2) A person shall not be treated as financially disabled  
28 during any period that the person's spouse or any other  
29 person is authorized to act on behalf of the person in  
30 financial matters.

31 (c) This section applies to periods of disability  
32 commencing before, on, or after the effective date of the  
33 act adding this section, but does not apply to any claim for  
34 refund that (without regard to this section) is barred by  
35 the operation or rule of law, including res judicata, as of  
36 the effective date of the act adding this section.

37 SEC. 10. Section 8257 is added to the Revenue and  
38 Taxation Code, to read:

39 8257. (a) Except as otherwise provided by law, any  
40 person who is engaged in the business of preparing, or

1 providing services in connection with the preparation of,  
2 returns under Chapter 5 (commencing with Section  
3 7651), or any person who for compensation prepares any  
4 such return for any other person, and who knowingly or  
5 recklessly does either of the following, shall be guilty of  
6 a misdemeanor, and, upon conviction thereof, shall be  
7 fined not more than one thousand dollars (\$1,000) or  
8 imprisoned no more than one year, or both, together with  
9 the costs of prosecution:

10 (1) Discloses any information furnished to him or her  
11 for, or in connection with, the preparation of the return.

12 (2) Uses that information for any purpose other than  
13 to prepare, or assist in preparing, the return.

14 (b) Subdivision (a) shall not apply to disclosure of  
15 information if that disclosure is made pursuant to the  
16 person's consent or pursuant to a subpoena, court order,  
17 or other compulsory legal process.

18 SEC. 11. Section 8269 of the Revenue and Taxation  
19 Code is amended to read:

20 8269. (a) Every taxpayer is entitled to be reimbursed  
21 for any reasonable fees and expenses related to a hearing  
22 before the board if all of the following conditions are met:

23 (1) The taxpayer files a claim for the fee and expenses  
24 with the board within one year of the date the decision of  
25 the board becomes final.

26 (2) The board, in its sole discretion, finds that the  
27 action taken by the board staff was unreasonable.

28 (3) The board decides that the taxpayer be awarded a  
29 specific amount of fees and expenses related to the  
30 hearing, in an amount determined by the board in its sole  
31 discretion.

32 (b) To determine whether the board staff has been  
33 unreasonable, the board shall consider whether the board  
34 staff has established that its position was substantially  
35 justified.

36 (c) The amount of reimbursed fees and expenses shall  
37 be limited to the following:

38 (1) Fees and expenses incurred after the date of the  
39 notice of determination, jeopardy determination, or a  
40 claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 12. Section 8756 is added to the Revenue and Taxation Code, to read:

8756. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or

1 nonpayment are attributable shall be made without  
2 regard to community property laws.

3 (c) This section shall apply to all calendar quarters  
4 subject to the provisions of this part, but shall not apply  
5 to any calendar quarter that is more than five years from  
6 the final date on the board-issued determination, five  
7 years from the return due date for nonpayment on a  
8 return, or one year from the first contact with the spouse  
9 making a claim under this section; or that has been closed  
10 by res judicata, whichever is later.

11 (d) For purposes, of paragraph (2) of subdivision (a),  
12 “reason to know” means whether or not a reasonably  
13 prudent person would have had reason to know of the  
14 understatement or nonpayment.

15 (e) Under procedures prescribed by the board, if,  
16 taking into account all the facts and circumstances, it is  
17 inequitable to hold the other spouse liable for any unpaid  
18 tax or any deficiency (or any portion of either)  
19 attributable to any item for which relief is not available  
20 under subdivision (a), the board may relieve the other  
21 spouse of that liability.

22 SEC. 13. Section 8877 of the Revenue and Taxation  
23 Code is amended to read:

24 8877. (a) If the board finds that a person’s failure to  
25 make a timely return or payment is due to reasonable  
26 cause and circumstances beyond the person’s control, and  
27 occurred notwithstanding the exercise of ordinary care  
28 and the absence of willful neglect, the person may be  
29 relieved of the penalty provided by Sections 8801, 8854,  
30 and 8876.

31 (b) Except as provided in subdivision (c), any person  
32 seeking to be relieved of the penalty shall file with the  
33 board a statement under penalty of perjury setting forth  
34 the facts upon which he or she bases his or her claim for  
35 relief.

36 (c) The board shall establish criteria that provides for  
37 efficient resolution of requests for relief pursuant to this  
38 section.

39 SEC. 14. Section 8958 is added to the Revenue and  
40 Taxation Code, to read:

1 8958. (a) Notwithstanding Article 7 (commencing  
2 with Section 706.151) of Chapter 5 of Title 9 of Part 2 of  
3 the Code of Civil Procedure, if the board determines  
4 upon receiving information from a user or other person  
5 liable for any amount under this part that the person's  
6 employer withheld earnings for tax as pursuant to Section  
7 8957 and failed to remit the withheld earnings to the  
8 board, the employer shall be liable for the amount not  
9 remitted. The board's determination shall be based on  
10 payroll documents or other substantiating evidence  
11 furnished by the person liable for the tax.

12 (b) Upon its determination, the board shall mail notice  
13 to the employer at its last known address that upon failure  
14 to remit the withheld earnings to the board within 15 days  
15 of the date of its notice to the employer, the employer  
16 shall be liable for that amount which was withheld and  
17 not remitted.

18 (c) If the employer fails to remit the amount withheld  
19 to the board upon notice, that amount for which the  
20 employer is liable shall be determined, collected, and  
21 paid as though it were a tax deficiency. The amount may  
22 be assessed at any time prior to seven years from the first  
23 day that the unremitted amount, in the aggregate, was  
24 first withheld. Interest shall accrue on that amount from  
25 the first day that the unremitted amount, in the  
26 aggregate, was first withheld.

27 (d) When the determination against the employer is  
28 final and due and payable, the person's account shall be  
29 immediately credited with an amount equal to that  
30 determined amount as though it were a payment  
31 received by the board on the first date that the  
32 unremitted amount, in the aggregate, was first withheld  
33 by the employer.

34 (e) Collection against the person liable for the tax is  
35 stayed for both the following amount and period:

36 (1) An amount equal to the amount determined by the  
37 board under subdivision (a).

38 (2) The earlier of the time the credit is applied to the  
39 person's account pursuant to subdivision (d) or the



determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer, and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 15. Section 9033 of the Revenue and Taxation Code is amended to read:

9033. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from



1 the date on which the board's notice of determination or  
2 redetermination becomes final, and the person complies  
3 with the terms of the installment payment agreement,  
4 the board shall relieve the penalty imposed pursuant to  
5 Section 8854.

6 SEC. 16. Section 9033.5 is added to the Revenue and  
7 Taxation Code, to read:

8 9033.5. The board, beginning no later than January 1,  
9 2001, shall provide each taxpayer who has an installment  
10 payment agreement in effect under Section 9033 an  
11 annual statement setting forth the initial balance at the  
12 beginning of the year, the payments made during the  
13 year, and the remaining balance as of the end of the year.

14 SEC. 17. Section 9152.1 is added to the Revenue and  
15 Taxation Code, to read:

16 9152.1. (a) The limitation period specified in Section  
17 9152 shall be suspended during any period of a person's  
18 life that the person is financially disabled.

19 (b) (1) For purposes of subdivision (a), a person is  
20 financially disabled if the person is unable to manage his  
21 or her financial affairs by reason of medically  
22 determinable physical or mental impairment of the  
23 person which can be expected to result in death or which  
24 has lasted or can be expected to last for a continuous  
25 period of not less than 12 months. A person shall not be  
26 considered to have an impairment unless proof of the  
27 existence thereof is furnished in the form and manner as  
28 the board may require.

29 (2) A person shall not be treated as financially disabled  
30 during any period that the person's spouse or any other  
31 person is authorized to act on behalf of the person in  
32 financial matters.

33 (c) This section applies to periods of disability  
34 commencing before, on, or after the effective date of the  
35 act adding this section, but does not apply to any claim for  
36 refund that (without regard to this section) is barred by  
37 the operation or rule of law, including res judicata, as of  
38 the effective date of the act adding this section.

39 SEC. 18. Section 9255.2 is added to the Revenue and  
40 Taxation Code, to read:



1 9255.2. (a) Except as otherwise provided by law, any  
2 person who is engaged in the business of preparing, or  
3 providing services in connection with the preparation of,  
4 returns under Chapter 4 (commencing with Section  
5 8751), or any person who for compensation prepares any  
6 such return for any other person, and who knowingly or  
7 recklessly does either of the following, shall be guilty of  
8 a misdemeanor, and, upon conviction thereof, shall be  
9 fined not more than one thousand dollars (\$1,000) or  
10 imprisoned no more than one year, or both, together with  
11 the costs of prosecution:

12 (1) Discloses any information furnished to him or her  
13 for, or in connection with, the preparation of the return.

14 (2) Uses that information for any purpose other than  
15 to prepare, or assist in preparing, the return.

16 (b) Subdivision (a) shall not apply to disclosure of  
17 information if that disclosure is made pursuant to the  
18 person's consent or pursuant to a subpoena, court order,  
19 or other compulsory legal process.

20 SEC. 19. Section 9269 of the Revenue and Taxation  
21 Code is amended to read:

22 9269. (a) Every taxpayer is entitled to be reimbursed  
23 for any reasonable fees and expenses related to a hearing  
24 before the board if all of the following conditions are met:

25 (1) The taxpayer files a claim for the fee and expenses  
26 with the board within one year of the date the decision of  
27 the board becomes final.

28 (2) The board, in its sole discretion, finds that the  
29 action taken by the board staff was unreasonable.

30 (3) The board decides that the taxpayer be awarded a  
31 specific amount of fees and expenses related to the  
32 hearing, in an amount determined by the board in its sole  
33 discretion.

34 (b) To determine whether the board staff has been  
35 unreasonable, the board shall consider whether the board  
36 staff has established that its position was substantially  
37 justified.

38 (c) The amount of reimbursed fees and expenses shall  
39 be limited to the following:

1 (1) Fees and expenses incurred after the date of the  
2 notice of determination, jeopardy determination, or a  
3 claim for refund.

4 (2) If the board finds that the staff was unreasonable  
5 with respect to certain issues but reasonable with respect  
6 to other issues, the amount of reimbursed fees and  
7 expenses shall be limited to those that relate to the issues  
8 where the staff was unreasonable.

9 (d) Any proposed award by the board pursuant to  
10 subdivision (a) shall be available as a public record for at  
11 least 10 days prior to the effective date of the award.

12 (e) The amendments to this section by the act adding  
13 this subdivision shall be operative for claims filed on or  
14 after January 1, 2000.

15 SEC. 19.5. Section 11253 of the Revenue and Taxation  
16 Code is amended to read:

17 11253. (a) The board may, in its discretion, enter into  
18 a written installment payment agreement with a person  
19 for the payment of any taxes due, together with interest  
20 thereon and any applicable penalties, in installments over  
21 an agreed period. With mutual consent, the board and the  
22 taxpayer may alter or modify the agreement.

23 (b) Upon failure of a person to fully comply with the  
24 terms of an installment payment agreement with the  
25 board, the board may terminate the agreement by  
26 mailing a notice of termination to the person. The notice  
27 shall include an explanation of the basis for the  
28 termination and inform the person of his or her right to  
29 request an administrative review of the termination.  
30 Fifteen days after the mailing of the notice, the  
31 installment payment agreement shall be void, and the  
32 total amount of the tax, interest, and penalties due shall  
33 be immediately payable.

34 (c) The board shall establish procedures for an  
35 administrative review for persons requesting that review  
36 whose installment payment agreements are terminated  
37 under subdivision (b). The collection of taxes, interest,  
38 and penalties that are the subject of the terminated  
39 installment payment agreement may not be stayed  
40 during this administrative review process.

(d) The notice requirement in subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the due date of the tax bill, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 11341.

SEC. 20. Section 11253.5 is added to the Revenue and Taxation Code, to read:

11253.5. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 11253 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 20.3. Section 11274 is added to the Revenue and Taxation Code, to read:

11274. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by failure to file a property statement required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a property statement, and the understatement of tax liability is attributable to one spouse; or any amount of the tax billed was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement, or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then

1 the other spouse shall be relieved of liability for tax  
2 (including interest, penalties, and other amounts) to the  
3 extent that the liability is attributable to that  
4 understatement or nonpayment of tax.

5 (b) For purposes of this section, the determination of  
6 the spouse to whom items of understatement or  
7 nonpayment are attributable shall be made without  
8 regard to community property laws.

9 (c) This section shall apply to all annual property  
10 statements and tax bills subject to the provisions of this  
11 part, but shall not apply to any annual property statement  
12 or tax bill that is more than five years from the final date  
13 on the board-issued determination, five years from the  
14 due date of the tax bill for nonpayment, or one year from  
15 the first contact with the spouse making a claim under  
16 this section; or that has been closed by res judicata,  
17 whichever is later.

18 (d) For purposes of paragraph (2) of subdivision (a),  
19 “reason to know” means whether or not a reasonably  
20 prudent person would have had reason to know of the  
21 understatement or nonpayment.

22 (e) Under procedures prescribed by the board, if,  
23 taking into account all the facts and circumstances, it is  
24 inequitable to hold the other spouse liable for any unpaid  
25 tax or any deficiency (or any portion of either)  
26 attributable to any item for which relief is not available  
27 under subdivision (a), the board may relieve the other  
28 spouse of that liability.

29 SEC. 20.5. Section 11453 is added to the Revenue and  
30 Taxation Code, to read:

31 11453. (a) Notwithstanding Article 7 (commencing  
32 with Section 706.151) of Chapter 5 of Division 2 of Title  
33 9 of Part 2 of the Code of Civil Procedure, if the board  
34 determines upon receiving information from a person  
35 liable for any amount under this part that the person’s  
36 employer withheld earnings for taxes pursuant to Section  
37 11452 and failed to remit the withheld earnings to the  
38 board, the employer shall be liable for the amount not  
39 remitted. The board’s determination shall be based on

1 payroll documents or other substantiating evidence  
2 furnished by the person liable for the tax.

3 (b) Upon its determination, the board shall mail notice  
4 to the employer at its last known address that upon failure  
5 to remit the withheld earnings to the board within 15 days  
6 of the date of its notice to the employer, the employer  
7 shall be liable for that amount which was withheld and  
8 not remitted.

9 (c) If the employer fails to remit the amount withheld  
10 to the board upon notice, that amount for which the  
11 employer is liable shall be determined, collected, and  
12 paid as though it were a tax deficiency. The amount may  
13 be assessed at any time prior to seven years from the first  
14 day that the unremitted amount, in the aggregate, was  
15 first withheld. Interest shall accrue on that amount from  
16 the first day that the unremitted amount, in the  
17 aggregate, was first withheld.

18 (d) When the determination against the employer is  
19 final and due and payable, the person's account shall be  
20 immediately credited with an amount equal to that  
21 determined amount as though it were a payment  
22 received by the board on the first date that the  
23 unremitted amount, in the aggregate, was first withheld  
24 by the employer.

25 (e) Collection against the person liable for the tax is  
26 stayed for both the following amount and period:

27 (1) An amount equal to the amount determined by the  
28 board under subdivision (a).

29 (2) The earlier of the time the credit is applied to the  
30 person's account pursuant to subdivision (d) or the  
31 determination against the employer is withdrawn or  
32 revised and the person is notified by the board thereof.

33 (f) If under this section an amount that was withheld  
34 and not remitted to the board is final and due and payable  
35 by the employer and credited to the person's account, this  
36 remedy shall be the exclusive remedy for the person to  
37 recover that amount from the employer.

38 (g) This section shall apply to determinations made by  
39 the board on or after the effective date of the act adding  
40 this section.

1 SEC. 21. Section 11553.5 is added to the Revenue and  
2 Taxation Code, to read:

3 11553.5. (a) The limitation period specified in  
4 Section 11553 shall be suspended during any period of a  
5 person's life that the person is financially disabled.

6 (b) (1) For purposes of subdivision (a), a person is  
7 financially disabled if the person is unable to manage his  
8 or her financial affairs by reason of medically  
9 determinable physical or mental impairment of the  
10 person which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous  
12 period of not less than 12 months. A person shall not be  
13 considered to have an impairment unless proof of the  
14 existence thereof is furnished in the form and manner as  
15 the board may require.

16 (2) A person shall not be treated as financially disabled  
17 during any period that the person's spouse or any other  
18 person is authorized to act on behalf of the person in  
19 financial matters.

20 (c) This section applies to periods of disability  
21 commencing before, on, or after the effective date of the  
22 act adding this section, but does not apply to any claim for  
23 refund that (without regard to this section) is barred by  
24 the operation or rule of law, including res judicata, as of  
25 the effective date of the act adding this section.

26 SEC. 21.3. Section 11597 of the Revenue and Taxation  
27 Code is amended to read:

28 11597. (a) Any penalty provided for in Section 11341,  
29 11354, 11405, or 11430 may be canceled by the board upon  
30 a finding that (1) the failure to make a timely payment  
31 is due to reasonable cause and circumstances beyond the  
32 taxpayer's control, and occurred notwithstanding the  
33 exercise of ordinary care and the absence of willful  
34 neglect, provided the principal payment is made within  
35 30 days after the delinquency date, or (2) there was an  
36 inadvertent error in the amount of payment made by the  
37 taxpayer, provided the principal payment for the proper  
38 amount of tax due is made within 10 days after the notice  
39 of shortage is mailed by the board.

1 (b) Except as provided in subdivision (c), any  
2 taxpayer seeking cancellation of the penalty shall file with  
3 the board a petition for cancellation or refund within 20  
4 days of payment of the principal amount of the tax or  
5 within 20 days after the board mails notice of the entry of  
6 the penalty, whichever date is later. The petition shall be  
7 accompanied by a statement under penalty of perjury  
8 setting forth the facts upon which the claim for relief is  
9 based.

10 (c) The board shall establish criteria that provides for  
11 efficient resolution of requests for relief pursuant to this  
12 section.

13 SEC. 21.5. Section 11656 is added to the Revenue and  
14 Taxation Code, to read:

15 11656. (a) Except as otherwise provided by law, any  
16 person who is engaged in the business of preparing, or  
17 providing services in connection with the preparation of,  
18 returns under Chapter 2 (commencing with Section  
19 11251) of this part, or any person who for compensation  
20 prepares any such return for any other person, and who  
21 knowingly or recklessly does either of the following, shall  
22 be guilty of a misdemeanor, and, upon conviction thereof,  
23 shall be fined not more than one thousand dollars (\$1,000)  
24 or imprisoned no more than one year, or both, together  
25 with the costs of prosecution:

26 (1) Discloses any information furnished to him or her  
27 for, or in connection with, the preparation of the return.

28 (2) Uses that information for any purpose other than  
29 to prepare, or assist in preparing, the return.

30 (b) Subdivision (a) shall not apply to disclosure of  
31 information if that disclosure is made pursuant to the  
32 person's consent or pursuant to a subpoena, court order,  
33 or other compulsory legal process.

34 SEC. 21.7. Section 11657 is added to the Revenue and  
35 Taxation Code, to read:

36 11657. (a) Every taxpayer is entitled to be  
37 reimbursed for any reasonable fees and expenses related  
38 to a hearing before the board if all of the following  
39 conditions are met:

1 (1) The taxpayer files a claim for the fee and expenses  
2 with the board within one year of the date the decision of  
3 the board becomes final.

4 (2) The board, in its sole discretion, finds that the  
5 action taken by the board staff was unreasonable.

6 (3) The board decides that the taxpayer be awarded a  
7 specific amount of fees and expenses related to the  
8 hearing, in an amount determined by the board in its sole  
9 discretion.

10 (b) To determine whether the board staff has been  
11 unreasonable, the board shall consider whether the board  
12 staff has established that its position was substantially  
13 justified.

14 (c) The amount of reimbursed fees and expenses shall  
15 be limited to the following:

16 (1) Fees and expenses incurred after the date of the  
17 notice of determination, jeopardy determination, or  
18 denial of a claim for refund.

19 (2) If the board finds that the staff was unreasonable  
20 with respect to certain issues but reasonable with respect  
21 to other issues, the amount of reimbursed fees and  
22 expenses shall be limited to those which relate to the  
23 issues where the staff was unreasonable.

24 (d) Any proposed award by the board pursuant to this  
25 section shall be available as a public record for at least 10  
26 days prior to the effective date of the award.

27 (e) The amendments to this section by the act adding  
28 this subdivision shall be operative for claims filed on or  
29 after January 1, 2001.

30 SEC. 22. Section 30189 is added to the Revenue and  
31 Taxation Code, to read:

32 30189. (a) Under regulations prescribed by the  
33 board, if:

34 (1) A tax liability under this part was understated by  
35 failure to file a return required to be filed under this  
36 part, by the omission of an amount properly includable  
37 therein, or by erroneous deductions or credits claimed  
38 on a return, and the understatement of tax liability is  
39 attributable to one spouse; or any amount of the tax



1 reported on a return was unpaid and the nonpayment  
2 of the reported tax liability is attributable to one spouse,

3 (2) The other spouse establishes that he or she did  
4 not know of, and had no reason to know of, that  
5 understatement or nonpayment, and

6 (3) Taking into account whether or not the other  
7 spouse significantly benefited directly or indirectly  
8 from the understatement or the nonpayment and  
9 taking into account all other facts and circumstances,  
10 it is inequitable to hold the other spouse liable for the  
11 deficiency in tax attributable to that understatement or  
12 nonpayment,

13 then the other spouse shall be relieved of liability for tax  
14 (including interest, penalties, and other amounts) to the  
15 extent that the liability is attributable to that  
16 understatement or nonpayment of tax.

17 (b) For purposes of this section, the determination of  
18 the spouse to whom items of understatement or  
19 nonpayment are attributable shall be made without  
20 regard to community property laws.

21 (c) This section shall apply to all calendar quarters  
22 subject to the provisions of this part, but shall not apply  
23 to any calendar quarter that is more than five years from  
24 the final date on the board-issued determination, five  
25 years from the return due date for nonpayment on a  
26 return, or one year from the first contact with the spouse  
27 making a claim under this section, or that has been closed  
28 by res judicata, whichever is later.

29 (d) For purposes of paragraph (2) of subdivision (a),  
30 “reason to know” means whether or not a reasonably  
31 prudent person would have had reason to know of the  
32 understatement or nonpayment.

33 (e) Under procedures prescribed by the board, if,  
34 taking into account all the facts and circumstances, it is  
35 inequitable to hold the other spouse liable for any unpaid  
36 tax or any deficiency (or any portion of either)  
37 attributable to any item for which relief is not available  
38 under subdivision (a), the board may relieve the other  
39 spouse of that liability.

1 SEC. 23. Section 30282 of the Revenue and Taxation  
2 Code is amended to read:

3 30282. (a) If the board finds that a person's failure to  
4 make a timely report or payment is due to reasonable  
5 cause and circumstances beyond the person's control, and  
6 occurred notwithstanding the exercise of ordinary care  
7 and in the absence of willful neglect, the person may be  
8 relieved of the penalty provided by Sections 30171, 30221,  
9 30264, and 30281.

10 (b) Except as provided in subdivision (c), any person  
11 seeking to be relieved of the penalty shall file with the  
12 board a statement under penalty of perjury setting forth  
13 the facts upon which he or she bases his or her claim for  
14 relief.

15 (c) The board shall establish criteria that provides for  
16 efficient resolution of requests for relief pursuant to this  
17 section.

18 SEC. 24. Section 30316 is added to the Revenue and  
19 Taxation Code, to read:

20 30316. (a) Notwithstanding Article 7 (commencing  
21 with Section 706.151) of Chapter 5 of Title 9 of Part 2 of  
22 the Code of Civil Procedure, if the board determines  
23 upon receiving information from a distributor or other  
24 person liable for any amount under this part that the  
25 person's employer withheld earnings for taxes pursuant  
26 to Section 30315 and failed to remit the withheld earnings  
27 to the board, the employer shall be liable for the amount  
28 not remitted. The board's determination shall be based  
29 on payroll documents or other substantiating evidence  
30 furnished by the person liable for the tax.

31 (b) Upon its determination, the board shall mail notice  
32 to the employer at its last known address that upon failure  
33 to remit the withheld earnings to the board within 15 days  
34 of the date of its notice to the employer, the employer  
35 shall be liable for that amount which was withheld and  
36 not remitted.

37 (c) If the employer fails to remit the amount withheld  
38 to the board upon notice, that amount for which the  
39 employer is liable shall be determined, collected, and  
40 paid as though it were a tax deficiency. The amount may

1 be assessed at any time prior to seven years from the first  
2 day that the unremitted amount, in the aggregate, was  
3 first withheld. Interest shall accrue on that amount from  
4 the first day that the unremitted amount, in the  
5 aggregate was first withheld.

6 (d) When the determination against the employer is  
7 final and due and payable, the person's account shall be  
8 immediately credited with an amount equal to that  
9 determined amount as though it were a payment  
10 received by the board on the first date that the  
11 unremitted amount, in the aggregate, was first withheld  
12 by the employer.

13 (e) Collection against the person liable for the tax is  
14 stayed for both the following amount and period:

15 (1) An amount equal to the amount determined by the  
16 board under subdivision (a).

17 (2) The earlier of the time the credit is applied to the  
18 person's account pursuant to subdivision (d) or the  
19 determination against the employer is withdrawn or  
20 revised and the person is notified by the board thereof.

21 (f) If under this section an amount that was withheld  
22 and not remitted to the board is final and due and payable  
23 by the employer and credited to the person's account, this  
24 remedy shall be the exclusive remedy for the person to  
25 recover that amount from the employer.

26 (g) This section shall apply to determinations made by  
27 the board on or after the effective date of the act adding  
28 this section.

29 SEC. 25. Section 30354 of the Revenue and Taxation  
30 Code is amended to read:

31 30354. (a) The board may, in its discretion, enter into  
32 a written installment payment agreement with a person  
33 for the payment of any taxes due, together with interest  
34 thereon and any applicable penalties, in installments over  
35 an agreed period. With mutual consent, the board and the  
36 taxpayer may alter or modify the agreement.

37 (b) Upon failure of a person to fully comply with the  
38 terms of an installment payment agreement with the  
39 board, the board may terminate the agreement by  
40 mailing a notice of termination to the person. The notice

1 shall include an explanation of the basis for the  
2 termination and inform the person of his or her right to  
3 request an administrative review of the termination.  
4 Fifteen days after the mailing of the notice, the  
5 installment payment agreement shall be void, and the  
6 total amount of the tax, interest, and penalties due shall  
7 be immediately payable.

8 (c) The board shall establish procedures for an  
9 administrative review for persons requesting that review  
10 whose installment payment agreements are terminated  
11 under subdivision (b). The collection of taxes, interest,  
12 and penalties that are the subject of the terminated  
13 installment payment agreement may not be stayed  
14 during this administrative review process.

15 (d) Subdivision (b) shall not apply to any case where  
16 the board finds collection of the tax to be in jeopardy.

17 (e) Except in the case of fraud, if an installment  
18 payment agreement is entered into within 45 days from  
19 the date on which the board's notice of determination or  
20 redetermination becomes final, and the person complies  
21 with the terms of the installment payment agreement,  
22 the board shall relieve the penalty imposed pursuant to  
23 Section 30264.

24 SEC. 26. Section 30354.5 is added to the Revenue and  
25 Taxation Code, to read:

26 30354.5. The board, beginning no later than January  
27 1, 2001, shall provide each taxpayer who has an  
28 installment payment agreement in effect under Section  
29 30354 an annual statement setting forth the initial balance  
30 at the beginning of the year, the payments made during  
31 the year and the remaining balance as of the end of the  
32 year.

33 SEC. 27. Section 30362.1 is added to the Revenue and  
34 Taxation Code, to read:

35 30362.1. (a) The limitation period specified in  
36 Section 30362 shall be suspended during any period of a  
37 person's life that the person is financially disabled.

38 (b) (1) For purposes of subdivision (a), a person is  
39 financially disabled if the person is unable to manage his  
40 or her financial affairs by reason of medically

determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 28. Section 30455.5 is added to the Revenue and Taxation Code, to read:

30455.5. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 4 (commencing with Section 30181) of this part, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return, or

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

1 SEC. 29. Section 30458.9 of the Revenue and Taxation  
2 Code is amended to read:

3 30458.9. (a) Every taxpayer is entitled to be  
4 reimbursed for any reasonable fees and expenses related  
5 to a hearing before the board if all of the following  
6 conditions are met:

7 (1) The taxpayer files a claim for the fees and expenses  
8 with the board within one year of the date the decision of  
9 the board becomes final.

10 (2) The board, in its sole discretion, finds that the  
11 action taken by the board staff was unreasonable.

12 (3) The board decides that the taxpayer be awarded a  
13 specific amount of fees and expenses related to the  
14 hearing, in an amount determined by the board in its sole  
15 discretion.

16 (b) To determine whether the board staff has been  
17 unreasonable, the board shall consider whether the board  
18 staff has established that its position was substantially  
19 justified.

20 (c) The amount of reimbursed fees and expenses shall  
21 be limited to the following:

22 (1) Fees and expenses incurred after the date of the  
23 notice of determination, jeopardy determination, or a  
24 claim for refund.

25 (2) If the board finds that the staff was unreasonable  
26 with respect to certain issues but reasonable with respect  
27 to other issues, the amount of reimbursed fees and  
28 expenses shall be limited to those that relate to the issues  
29 where the state was unreasonable.

30 (d) Any proposed award by the board pursuant to  
31 subdivision (a) shall be available as a public record for at  
32 least 10 days prior to the effective date of the award.

33 (e) The amendments to this section by the act adding  
34 this subdivision shall be operative for claims filed on or  
35 after January 1, 2000.

36 SEC. 30. Section 32255 of the Revenue and Taxation  
37 Code is amended to read:

38 32255. (a) If the board finds that a person's failure to  
39 make a timely return or payment is due to reasonable  
40 cause and circumstances beyond the person's control, and

1 occurred notwithstanding the exercise of ordinary care  
2 and the absence of willful neglect, the person may be  
3 relieved of the penalty provided by Sections 32252, 32291,  
4 32292, and 32305.

5 (b) Except as provided in subdivision (c), any person  
6 seeking to be relieved of the penalty shall file with the  
7 board a statement under penalty of perjury setting forth  
8 the facts upon which he or she bases his or her claim for  
9 relief.

10 (c) The board shall establish criteria that provides for  
11 efficient resolution of requests for relief pursuant to this  
12 section.

13 SEC. 31. Section 32258 is added to the Revenue and  
14 Taxation Code, to read:

15 32258. (a) Under regulations prescribed by the  
16 board, if:

17 (1) A tax liability under this part was understated by  
18 failure to file a return required to be filed under this  
19 part, by the omission of an amount properly includable  
20 therein, or by erroneous deductions or credits claimed  
21 on a return, and the understatement of tax liability is  
22 attributable to one spouse; or any amount of the tax  
23 reported on a return was unpaid and the nonpayment  
24 of the reported tax liability is attributable to one spouse,

25 (2) The other spouse establishes that he or she did  
26 not know of, and had no reason to know of, that  
27 understatement or nonpayment, and

28 (3) Taking into account whether or not the other  
29 spouse significantly benefited directly or indirectly  
30 from the understatement or the nonpayment and  
31 taking into account all other facts and circumstances,  
32 it is inequitable to hold the other spouse liable for the  
33 deficiency in tax attributable to that understatement or  
34 nonpayment,

35 then the other spouse shall be relieved of liability for tax  
36 (including interest, penalties, and other amounts) to the  
37 extent that the liability is attributable to that  
38 understatement or nonpayment of tax.

39 (b) For purposes of this section, the determination of  
40 the spouse to whom items of understatement or



1 nonpayment are attributable shall be made without  
2 regard to community property laws.

3 (c) This section shall apply to all calendar quarters  
4 subject to the provisions of this part, but shall not apply  
5 to any calendar quarter that is more than five years from  
6 the final date on the board-issued determination, five  
7 years from the return due date for nonpayment on a  
8 return, or one year from the first contact with the spouse  
9 making a claim under this section, or that has been closed  
10 by res judicata, whichever is later.

11 (d) For purposes of paragraph (2) of subdivision (a),  
12 “reason to know” means whether or not a reasonably  
13 prudent person would have had reason to know of the  
14 understatement or nonpayment.

15 (e) Under procedures prescribed by the board, if,  
16 taking into account all the facts and circumstances, it is  
17 inequitable to hold the other spouse liable for any unpaid  
18 tax or any deficiency (or any portion of either)  
19 attributable to any item for which relief is not available  
20 under subdivision (a), the board may relieve the other  
21 spouse of that liability.

22 SEC. 32. Section 32387.5 is added to the Revenue and  
23 Taxation Code, to read:

24 32387.5. (a) Notwithstanding Article 7  
25 (commencing with Section 706.151) of Chapter 5 of Title  
26 9 of Part 2 of the Code of Civil Procedure, if the board  
27 determines upon receiving information from a  
28 manufacturer or other person liable for any amount  
29 under this part that the person’s employer withheld  
30 earnings for taxes pursuant to Section 32387 and failed to  
31 remit the withheld earnings to the board, the employer  
32 shall be liable for the amount not remitted. The board’s  
33 determination shall be based on payroll documents or  
34 other substantiating evidence furnished by the person  
35 liable for the tax.

36 (b) Upon its determination, the board shall mail notice  
37 to the employer at its last known address that upon failure  
38 to remit the withheld earnings to the board within 15 days  
39 of the date of its notice to the employer, the employer





1 shall be liable for that amount which was withheld and  
2 not remitted.

3 (c) If the employer fails to remit the amount withheld  
4 to the board upon notice, that amount for which the  
5 employer is liable shall be determined, collected, and  
6 paid as though it were a tax deficiency. The amount may  
7 be assessed at any time prior to seven years from the first  
8 day that the unremitted amount, in the aggregate, was  
9 first withheld. Interest shall accrue on that amount from  
10 the first day that the unremitted amount, in the  
11 aggregate, was first withheld.

12 (d) When the determination against the employer is  
13 final and due and payable, the person's account shall be  
14 immediately credited with an amount equal to that  
15 determined amount as though it were a payment  
16 received by the board on the first date that the  
17 unremitted amount, in the aggregate, was first withheld  
18 by the employer.

19 (e) Collection against the person liable for the tax is  
20 stayed for both the following amount and period:

21 (1) An amount equal to the amount determined by the  
22 board under subdivision (a).

23 (2) The earlier of the time the credit is applied to the  
24 person's account pursuant to subdivision (d) or the  
25 determination against the employer is withdrawn or  
26 revised and the person is notified by the board thereof.

27 (f) If under this section an amount that was withheld  
28 and not remitted to the board is final and due and payable  
29 by the employer and credited to the person's account, this  
30 remedy shall be the exclusive remedy for the person to  
31 recover that amount from the employer.

32 (g) This section shall apply to determinations made by  
33 the board on or after the effective date of the act adding  
34 this section.

35 SEC. 33. Section 32389 of the Revenue and Taxation  
36 Code is amended to read:

37 32389. (a) The board may, in its discretion, enter into  
38 a written installment payment agreement with a person  
39 for the payment of any taxes due, together with interest  
40 thereon and any applicable penalties, in installments over

1 an agreed period. With mutual consent, the board and the  
2 taxpayer may alter or modify the agreement.

3 (b) Upon failure of a person to fully comply with the  
4 terms of an installment payment agreement with the  
5 board, the board may terminate the agreement by  
6 mailing a notice of termination to the person. The notice  
7 shall include an explanation of the basis for the  
8 termination and inform the person of his or her right to  
9 request an administrative review of the termination.  
10 Fifteen days after the mailing of the notice, the  
11 installment payment agreement shall be void, and the  
12 total amount of the tax, interest, and penalties due shall  
13 be immediately payable.

14 (c) The board shall establish procedures for an  
15 administrative review for persons requesting that review  
16 whose installment payment agreements are terminated  
17 under subdivision (b). The collection of taxes, interest,  
18 and penalties that are the subject of the terminated  
19 installment payment agreement may not be stayed  
20 during this administrative review process.

21 (d) Subdivision (b) shall not apply to any case where  
22 the board finds collection of the tax to be in jeopardy.

23 (e) Except in the case of fraud, if an installment  
24 payment agreement is entered into within 45 days from  
25 the date on which the board's notice of determination or  
26 redetermination becomes final, and the person complies  
27 with the terms of the installment payment agreement,  
28 the board shall relieve the penalty imposed pursuant to  
29 Section 32305.

30 SEC. 34. Section 32389.5 is added to the Revenue and  
31 Taxation Code, to read:

32 32389.5. The board, beginning no later than July 1,  
33 2000, shall provide each taxpayer who has an installment  
34 payment agreement in effect under Section 32389 an  
35 annual statement setting forth the initial balance at the  
36 beginning of the year, the payments made during the  
37 year, and the remaining balance as of the end of the year.

38 SEC. 35. Section 32402.1 is added to the Revenue and  
39 Taxation Code, to read:

1 32402.1. (a) The limitation period specified in  
2 Section 32402 shall be suspended during any period of a  
3 person's life that the person is financially disabled.

4 (b) (1) For purposes of subdivision (a), a person is  
5 financially disabled if the person is unable to manage his  
6 or her financial affairs by reason of medically  
7 determinable physical or mental impairment of the  
8 person which can be expected to result in death or which  
9 has lasted or can be expected to last for a continuous  
10 period of not less than 12 months. A person shall not be  
11 considered to have an impairment unless proof of the  
12 existences thereof is furnished in the form and manner as  
13 the board may require.

14 (2) A person shall not be treated as financially disabled  
15 during any period that the person's spouse or any other  
16 person is authorized to act on behalf of the person in  
17 financial matters.

18 (c) This section applies to periods of disability  
19 commencing before, on, or after the effective date of the  
20 act adding this section, but does not apply to any claim for  
21 refund that (without regard to this section) is barred by  
22 the operation or rule of law, including res judicata, as of  
23 the effective date of the act adding this section.

24 SEC. 36. Section 32455.5 is added to the Revenue and  
25 Taxation Code, to read:

26 32455.5. (a) Except as otherwise provided by law,  
27 any person who is engaged in the business of preparing,  
28 or providing services in connection with the preparation  
29 of, returns under Chapter 6 of this part, or any person who  
30 for compensation prepares any such return for any other  
31 person, and who knowingly or recklessly does either of  
32 the following, shall be guilty of a misdemeanor, and, upon  
33 conviction thereof, shall be fined not more than one  
34 thousand dollars (\$1,000) or imprisoned no more than  
35 one year, or both, together with the costs of prosecution:

36 (1) Discloses any information furnished to him or her  
37 for, or in connection with, the preparation of the return.

38 (2) Uses that information for any purpose other than  
39 to prepare, or assist in preparing, the return.

1 (b) Subdivision (a) shall not apply to disclosure of  
2 information if that disclosure is made pursuant to the  
3 person's consent or pursuant to a subpoena, court order,  
4 or other compulsory legal process.

5 SEC. 37. Section 32469 of the Revenue and Taxation  
6 Code is amended to read:

7 32469. (a) Every taxpayer is entitled to be  
8 reimbursed for any reasonable fees and expenses related  
9 to a hearing before the board if all of the following  
10 conditions are met:

11 (1) The taxpayer files a claim for the fee and expenses  
12 with the board within one year of the date the decision of  
13 the board becomes final.

14 (2) The board, in its sole discretion, finds that the  
15 action taken by the board staff was unreasonable.

16 (3) The board decides that the taxpayer be awarded a  
17 specific amount of fees and expenses related to the  
18 hearing, in an amount determined by the board in its sole  
19 discretion.

20 (b) To determine whether the board staff has been  
21 unreasonable, the board shall consider whether the board  
22 staff has established that its position was substantially  
23 justified.

24 (c) The amount of reimbursed fees and expenses shall  
25 be limited to the following:

26 (1) Fees and expenses incurred after the date of the  
27 notice of determination, jeopardy determination, or a  
28 claim for refund.

29 (2) If the board finds that the staff was unreasonable  
30 with respect to certain issues but reasonable with respect  
31 to other issues, the amount of reimbursed fees and  
32 expenses shall be limited to those that relate to the issues  
33 where the staff was unreasonable.

34 (d) Any proposed award by the board pursuant to  
35 subdivision (a) shall be available as a public record for at  
36 least 10 days prior to the effective date of the award.

37 (e) The amendments to this section by the act adding  
38 this subdivision shall be operative for claims filed on or  
39 after January 1, 2000.

SEC. 37.3. Section 38406 is added to the Revenue and Taxation Code, to read:

38406. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement, or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably

1 prudent person would have had reason to know of the  
2 understatement or nonpayment.

3 (e) Under procedures prescribed by the board, if,  
4 taking into account all the facts and circumstances, it is  
5 inequitable to hold the other spouse liable for any unpaid  
6 tax or any deficiency (or any portion of either)  
7 attributable to any item for which relief is not available  
8 under subdivision (a), the board may relieve the other  
9 spouse of that liability.

10 SEC. 37.5. Section 38452 of the Revenue and Taxation  
11 Code is amended to read:

12 38452. (a) If the board finds that a person's failure to  
13 make a timely return or payment is due to reasonable  
14 cause and circumstances beyond the person's control, and  
15 occurred notwithstanding the exercise of ordinary care  
16 and the absence of willful neglect, the person may be  
17 relieved of the penalty provided by Sections 38421 and  
18 38451.

19 (b) Except as provided in subdivision (c), any person  
20 seeking to be relieved of the penalty shall file with the  
21 board a statement under penalty of perjury setting forth  
22 the facts upon which he or she bases his or her claim for  
23 relief.

24 (c) The board shall establish criteria that provides for  
25 efficient resolution of requests for relief pursuant to this  
26 section.

27 SEC. 37.7. Section 38503.5 is added to the Revenue  
28 and Taxation Code, to read:

29 38503.5. (a) Notwithstanding Article 7  
30 (commencing with Section 706.151) of Chapter 5 of  
31 Division 2 of Title 9 of Part 2 of the Code of Civil  
32 Procedure, if the board determines upon receiving  
33 information from a person liable for any amount under  
34 this part that the person's employer withheld earnings for  
35 taxes pursuant to Section 38503 and failed to remit the  
36 withheld earnings to the board, the employer shall be  
37 liable for the amount not remitted. The board's  
38 determination shall be based on payroll documents or  
39 other substantiating evidence furnished by the person  
40 liable for the tax.



(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 37.9. Section 38504 of the Revenue and Taxation Code is amended to read:



1 38504. (a) The board may, in its discretion, enter into  
2 a written installment payment agreement with a person  
3 for the payment of any taxes due, together with interest  
4 thereon and any applicable penalties, in installments over  
5 an agreed period. With mutual consent, the board and the  
6 taxpayer may alter or modify the agreement.

7 (b) Upon failure of a person to fully comply with the  
8 terms of an installment payment agreement with the  
9 board, the board may terminate the agreement by  
10 mailing a notice of termination to the person. The notice  
11 shall include an explanation of the basis for the  
12 termination and inform the person of his or her right to  
13 request an administrative review of the termination.  
14 Fifteen days after the mailing of the notice, the  
15 installment payment agreement shall be void, and the  
16 total amount of the tax, interest, and penalties due shall  
17 be immediately payable.

18 (c) The board shall establish procedures for an  
19 administrative review for persons requesting that review  
20 whose installment payment agreements are terminated  
21 under subdivision (b). The collection of taxes, interest,  
22 and penalties that are the subject of the terminated  
23 installment payment agreement may not be stayed  
24 during this administrative review process.

25 (d) The notice requirement in subdivision (b) shall  
26 not apply to any case where the board finds collection of  
27 the tax to be in jeopardy.

28 (e) Except in the case of fraud, if an installment  
29 payment agreement is entered into within 45 days from  
30 the date in which the board's notice of determination or  
31 redetermination becomes final, and the person complies  
32 with the terms of the installment payment agreement,  
33 the board shall relieve the penalty imposed pursuant to  
34 Section 38446.

35 SEC. 38. Section 38504.5 is added to the Revenue and  
36 Taxation Code, to read:

37 38504.5. The board, beginning no later than January  
38 1, 2001, shall provide each taxpayer who has an  
39 installment payment agreement in effect under Section  
40 38504 an annual statement setting forth the initial balance



1 at the beginning of the year, the payments made during  
2 the year, and the remaining balance as of the end of the  
3 year.

4 SEC. 39. Section 38602.5 is added to the Revenue and  
5 Taxation Code, to read:

6 38602.5. (a) The limitation period specified in  
7 Section 38602 shall be suspended during any period of a  
8 person's life that the person is financially disabled.

9 (b) (1) For purposes of subdivision (a), a person is  
10 financially disabled if the person is unable to manage his  
11 or her financial affairs by reason of medically  
12 determinable physical or mental impairment of the  
13 person which can be expected to result in death or which  
14 has lasted or can be expected to last for a continuous  
15 period of not less than 12 months. A person shall not be  
16 considered to have an impairment unless proof of the  
17 existence thereof is furnished in the form and manner as  
18 the board may require.

19 (2) A person shall not be treated as financially disabled  
20 during any period that the person's spouse or any other  
21 person is authorized to act on behalf of the person in  
22 financial matters.

23 (c) This section applies to periods of disability  
24 commencing before, on, or after the effective date of the  
25 act adding this section, but does not apply to any claim for  
26 refund that (without regard to this section) is barred by  
27 the operation or rule of law, including res judicata, as of  
28 the effective date of the act adding this section.

29 SEC. 39.3. Section 38707 is added to the Revenue and  
30 Taxation Code, to read:

31 38707. (a) Except as otherwise provided by law, any  
32 person who is engaged in the business of preparing, or  
33 providing services in connection with the preparation of,  
34 returns under Chapter 5 of this part, or any person who  
35 for compensation prepares any such return for any other  
36 person, and who knowingly or recklessly does either of  
37 the following, shall be guilty of a misdemeanor, and, upon  
38 conviction thereof, shall be fined not more than one  
39 thousand dollars (\$1,000) or imprisoned no more than  
40 one year, or both, together with the costs of prosecution:

1 (1) Discloses any information furnished to him or her  
2 for, or in connection with, the preparation of the return.

3 (2) Uses that information for any purpose other than  
4 to prepare, or assist in preparing, the return.

5 (b) Subdivision (a) shall not apply to disclosure of  
6 information if that disclosure is made pursuant to the  
7 person's consent or pursuant to a subpoena, court order,  
8 or other compulsory legal process.

9 SEC. 39.5. Section 38708 is added to the Revenue and  
10 Taxation Code, to read:

11 38708. (a) Every taxpayer is entitled to be  
12 reimbursed for any reasonable fees and expenses related  
13 to a hearing before the board if all of the following  
14 conditions are met:

15 (1) The taxpayer files a claim for the fee and expenses  
16 with the board within one year of the date the decision of  
17 the board becomes final.

18 (2) The board, in its sole discretion, finds that the  
19 action taken by the board staff was unreasonable.

20 (3) The board decides that the taxpayer be awarded a  
21 specific amount of fees and expenses related to the  
22 hearing, in an amount determined by the board in its sole  
23 discretion.

24 (b) To determine whether the board staff has been  
25 unreasonable, the board shall consider whether the board  
26 staff has established that its position was substantially  
27 justified.

28 (c) The amount of reimbursed fees and expenses shall  
29 be limited to the following:

30 (1) Fees and expenses incurred after the date of the  
31 notice of determination, jeopardy determination, or  
32 denial of a claim for refund.

33 (2) If the board finds that the staff was unreasonable  
34 with respect to certain issues but reasonable with respect  
35 to other issues, the amount of reimbursed fees and  
36 expenses shall be limited to those which relate to the  
37 issues where the staff was unreasonable.

38 (d) Any proposed award by the board pursuant to this  
39 section shall be available as a public record for at least 10  
40 days prior to the effective date of the award.

1 (e) This section shall be operative for claims filed on  
2 or after January 1, 2001.

3 SEC. 40. Section 40066 is added to the Revenue and  
4 Taxation Code, to read:

5 40066. (a) Under regulations prescribed by the  
6 board, if:

7 (1) A tax liability under this part was understated by  
8 failure to file a return required to be filed under this  
9 part, by the omission of an amount properly includable  
10 therein, or by erroneous deductions or credits claimed  
11 on a return, and the understatement of tax liability is  
12 attributable to one spouse, or any amount of the tax  
13 reported on a return was unpaid and the nonpayment  
14 of the reported tax liability is attributable to one spouse,

15 (2) The other spouse establishes that he or she did  
16 not know of, and had no reason to know of, that  
17 understatement or nonpayment, and

18 (3) Taking into account whether or not the other  
19 spouse significantly benefited directly or indirectly  
20 from the understatement or the nonpayment and  
21 taking into account all other facts and circumstances,  
22 it is inequitable to hold the other spouse liable for the  
23 deficiency in tax attributable to that understatement or  
24 nonpayment,

25 then the other spouse shall be relieved of liability for tax  
26 (including interest, penalties, and other amounts) to the  
27 extent that the liability is attributable to that  
28 understatement or nonpayment of tax.

29 (b) For purposes of this section, the determination of  
30 the spouse to whom items of understatement or  
31 nonpayment are attributable shall be made without  
32 regard to community property laws.

33 (c) This section shall apply to all calendar quarters  
34 subject to the provisions of this part but shall not apply to  
35 any calendar quarter that is more than five years from the  
36 final date on the board-issued determination, five years  
37 from the return due date for nonpayment on a return, or  
38 one year from the first contact with the spouse making a  
39 claim under this section, or that has been closed by res  
40 judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

SEC. 41. Section 40102 of the Revenue and Taxation Code is amended to read:

40102. (a) If the board finds that a person’s failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 40081, 40096, and 40101.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provides for efficient resolution of requests for relief pursuant to this section.

SEC. 42. Section 40112.1 is added to the Revenue and Taxation Code, to read:

40112.1. (a) The limitation period specified in Section 40112 shall be suspended during any period of a person’s life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be

1 considered to have an impairment unless proof of the  
2 existence thereof is furnished in the form and manner as  
3 the board may require.

4 (2) A person shall not be treated as financially disabled  
5 during any period that the person's spouse or any other  
6 person is authorized to act on behalf of the person in  
7 financial matters.

8 (c) This section applies to periods of disability  
9 commencing before, on, or after the effective date of the  
10 act adding this section, but does not apply to any claim for  
11 refund that (without regard to this section) is barred by  
12 the operation or rule of law, including res judicata, as of  
13 the effective date of the act adding this section.

14 SEC. 43. Section 40156 is added to the Revenue and  
15 Taxation Code, to read:

16 40156. (a) Notwithstanding Article 7 (commencing  
17 with Section 706.151) of Chapter 5 of Title 9 of Part 2 of  
18 the Code of Civil Procedure, if the board determines  
19 upon receiving information from a user or other person  
20 liable for any amount under this part that the person's  
21 employer withheld earnings for taxes pursuant to Section  
22 40155 and failed to remit the withheld earnings to the  
23 board, the employer shall be liable for the amount not  
24 remitted. The board's determination shall be based on  
25 payroll documents or other substantiating evidence  
26 furnished by the person liable for the tax.

27 (b) Upon its determination, the board shall mail notice  
28 to the employer at its last known address that upon failure  
29 to remit the withheld earnings to the board within 15 days  
30 of the date of its notice to the employer, the employer  
31 shall be liable for that amount which was withheld and  
32 not remitted.

33 (c) If the employer fails to remit the amount withheld  
34 to the board upon notice, that amount for which the  
35 employer is liable shall be determined, collected, and  
36 paid as though it were a tax deficiency. The amount may  
37 be assessed at any time prior to seven years from the first  
38 day that the unremitted amount, in the aggregate, was  
39 first withheld. Interest shall accrue on that amount from

1 the first day that the unremitted amount, in the  
2 aggregate, was first withheld.

3 (d) When the determination against the employer is  
4 final and due and payable, the person's account shall be  
5 immediately credited with an amount equal to that  
6 determined amount as though it were a payment  
7 received by the board on the first date that the  
8 unremitted amount, in the aggregate, was first withheld  
9 by the employer.

10 (e) Collection against the person liable for the tax is  
11 stayed for both the following amount and period:

12 (1) An amount equal to the amount determined by the  
13 board under subdivision (a).

14 (2) The earlier of the time the credit is applied to the  
15 person's account pursuant to subdivision (d) or the  
16 determination against the employer is withdrawn or  
17 revised and the person is notified by the board thereof.

18 (f) If under this section an amount that was withheld  
19 and not remitted to the board is final and due and payable  
20 by the employer and credited to the person's account, this  
21 remedy shall be the exclusive remedy for the person to  
22 recover that amount from the employer.

23 (g) This section shall apply to determinations made by  
24 the board on or after the effective date of the act adding  
25 this section.

26 SEC. 44. Section 40167 of the Revenue and Taxation  
27 Code is amended to read:

28 40167. (a) The board may, in its discretion, enter into  
29 a written installment payment agreement with a person  
30 for the payment of any surcharges due, together with  
31 interest thereon and any applicable penalties, in  
32 installments over an agreed period. With mutual consent,  
33 the board and the person liable for the surcharge may  
34 alter or modify the agreement.

35 (b) Upon failure of a person to fully comply with the  
36 terms of an installment payment agreement with the  
37 board, the board may terminate the agreement by  
38 mailing a notice of termination to the person. The notice  
39 shall include an explanation of the basis for the  
40 termination and inform the person of his or her right to

1 request an administrative review of the termination.  
2 Fifteen days after the mailing of the notice, the  
3 installment payment agreement shall be void, and the  
4 total amount of the surcharge, interest, and penalties due  
5 shall be immediately payable.

6 (c) The board shall establish procedures for an  
7 administrative review for persons requesting that review  
8 whose installment payment agreements are terminated  
9 under subdivision (b). The collection of surcharge,  
10 interest, and penalties that are the subject of the  
11 terminated installment payment agreement may not be  
12 stayed during this administrative review process.

13 (d) Except in the case of fraud, if an installment  
14 payment agreement is entered into within 45 days from  
15 the date on which the board's notice of determination or  
16 redetermination becomes final and the person complies  
17 with the terms of the installment payment agreement,  
18 the board shall relieve the penalty imposed pursuant to  
19 Section 40096.

20 SEC. 45. Section 40167.5 is added to the Revenue and  
21 Taxation Code, to read:

22 40167.5. The board shall, beginning no later than  
23 January 1, 2001, provide each taxpayer who has an  
24 installment payment agreement in effect under Section  
25 40167 an annual statement setting forth the initial balance  
26 at the beginning of the year, the payments made during  
27 the year, and the remaining balance as of the end of the  
28 year.

29 SEC. 46. Section 40176 is added to the Revenue and  
30 Taxation Code, to read:

31 40176. (a) Except as otherwise provided by law, any  
32 person who is engaged in the business of preparing, or  
33 providing services in connection with the preparation of,  
34 returns under Chapter 4 (commencing with Section  
35 40051), or any person who for compensation prepares any  
36 such return for any other person, and who knowingly or  
37 recklessly does either of the following, shall be guilty of  
38 a misdemeanor, and, upon conviction thereof, shall be  
39 fined not more than one thousand dollars (\$1,000) or

1 imprisoned no more than one year, or both, together with  
2 the costs of prosecution:

3 (1) Discloses any information furnished to him or her  
4 for, or in connection with, the preparation of the return.

5 (2) Uses that information for any purpose other than  
6 to prepare, or assist in preparing, the return.

7 (b) Subdivision (a) shall not apply to disclosure of  
8 information if that disclosure is made pursuant to the  
9 person's consent or pursuant to a subpoena, court order,  
10 or other compulsory legal process.

11 SEC. 47. Section 40209 of the Revenue and Taxation  
12 Code is amended to read:

13 40209. (a) Every taxpayer is entitled to be  
14 reimbursed for any reasonable fees and expenses related  
15 to a hearing before the board if all of the following  
16 conditions are met:

17 (1) The taxpayer files a claim for the fee and expenses  
18 with the board within one year of the date the decision of  
19 the board becomes final.

20 (2) The board, in its sole discretion, finds that the  
21 action taken by the board staff was unreasonable.

22 (3) The board decides that the taxpayer be awarded a  
23 specific amount of fees and expenses related to the  
24 hearing, in an amount determined by the board in its sole  
25 discretion.

26 (b) To determine whether the board staff has been  
27 unreasonable, the board shall consider whether the board  
28 staff has established that its position was substantially  
29 justified.

30 (c) The amount of reimbursed fees and expenses shall  
31 be limited to the following:

32 (1) Fees and expenses incurred after the date of the  
33 notice of determination, jeopardy determination, or a  
34 claim for refund.

35 (2) If the board finds that the staff was unreasonable  
36 with respect to certain issues but reasonable with respect  
37 to other issues, the amount of reimbursed fees and  
38 expenses shall be limited to those that relate to the issues  
39 where the staff was unreasonable.



(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 48. Section 41057 is added to the Revenue and Taxation Code, to read:

41057. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all reporting periods subject to the provisions of this part, but shall not apply to any reporting period that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a

1 return, or one year from the first contact with the spouse  
2 making a claim under this section; or that has been closed  
3 by res judicata, whichever is later.

4 (d) For purposes of paragraph (2) of subdivision (a),  
5 “reason to know” means whether or not a reasonably  
6 prudent person would have had reason to know of the  
7 understatement or nonpayment.

8 (e) Under procedures prescribed by the board, if,  
9 taking into account all the facts and circumstances, it is  
10 inequitable to hold the other spouse liable for any unpaid  
11 tax or any deficiency, or any portion of either,  
12 attributable to any item for which relief is not available  
13 under subdivision (a), the board may relieve the other  
14 spouse of that liability.

15 SEC. 49. Section 41096 of the Revenue and Taxation  
16 Code is amended to read:

17 41096. (a) If the board finds that a person’s failure to  
18 make a timely return or payment is due to reasonable  
19 cause and circumstances beyond the person’s control, and  
20 occurred notwithstanding the exercise of ordinary care  
21 and the absence of willful neglect, the person may be  
22 relieved of the penalty provided by Sections 41080, 41090,  
23 and 41095.

24 (b) Except as provided in subdivision (c), any person  
25 seeking to be relieved of the penalty shall file with the  
26 board a statement under penalty of perjury setting forth  
27 the facts upon which he or she bases his or her claim for  
28 relief.

29 (c) The board shall establish criteria that provide for  
30 efficient resolution of requests for relief pursuant to this  
31 section.

32 SEC. 49.5. Section 41099 is added to the Revenue and  
33 Taxation Code, to read:

34 41099. (a) Under regulations prescribed by the  
35 board, if:

36 (1) A tax liability under this part was understated by  
37 failure to file a return required to be filed under this part,  
38 by the omission of an amount properly includable  
39 therein, or by erroneous deductions or credits claimed on  
40 a return, and the understatement of tax liability is

1 attributable to one spouse; or any amount of the tax  
2 reported on a return was unpaid and the nonpayment of  
3 the reported tax liability is attributable to one spouse.

4 (2) The other spouse establishes that he or she did not  
5 know of, and had no reason to know of, that  
6 understatement or nonpayment.

7 (3) Taking into account whether or not the other  
8 spouse significantly benefited directly or indirectly from  
9 the understatement or the nonpayment and taking into  
10 account all other facts and circumstances, it is inequitable  
11 to hold the other spouse liable for the deficiency in tax  
12 attributable to that understatement or nonpayment, then  
13 the other spouse shall be relieved of liability for tax  
14 (including interest, penalties, and other amounts) to the  
15 extent that the liability is attributable to that  
16 understatement or nonpayment of tax.

17 (b) For purposes of this section, the determination of  
18 the spouse to whom items of understatement or  
19 nonpayment are attributable shall be made without  
20 regard to community property laws.

21 (c) This section shall apply to all calendar quarters  
22 subject to the provisions of this part, but shall not apply  
23 to any calendar quarter that is more than five years from  
24 the final date on the board-issued determination, five  
25 years from the return due date for nonpayment on a  
26 return, or one year from the first contact with the spouse  
27 making a claim under this section; or that has been closed  
28 by *res judicata*, whichever is later.

29 (d) For purposes of paragraph (2) of subdivision (a),  
30 “reason to know” means whether or not a reasonably  
31 prudent person would have had reason to know of the  
32 understatement or nonpayment.

33 (e) Under procedures prescribed by the board, if,  
34 taking into account all the facts and circumstances, it is  
35 inequitable to hold the other spouse liable for any unpaid  
36 tax or any deficiency, or any portion of either,  
37 attributable to any item for which relief is not available  
38 under subdivision (a), the board may relieve the other  
39 spouse of that liability.

1 SEC. 50. Section 41101.1 is added to the Revenue and  
2 Taxation Code, to read:

3 41101.1. (a) The limitation period specified in  
4 Section 41101 shall be suspended during any period of a  
5 person's life that the person is financially disabled.

6 (b) (1) For purposes of subdivision (a), a person is  
7 financially disabled if the person is unable to manage his  
8 or her financial affairs by reason of medically  
9 determinable physical or mental impairment of the  
10 person which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous  
12 period of not less than 12 months. A person shall not be  
13 considered to have an impairment unless proof of the  
14 existence thereof is furnished in the form and manner as  
15 the board may require.

16 (2) A person shall not be treated as financially disabled  
17 during any period that the person's spouse or any other  
18 person is authorized to act on behalf of the person in  
19 financial matters.

20 (c) This section applies to periods of disability  
21 commencing before, on, or after the effective date of the  
22 act adding this section, but does not apply to any claim for  
23 refund that (without regard to this section) is barred by  
24 the operation of rule of law, including res judicata, as of  
25 the effective date of the act adding this section.

26 SEC. 51. Section 41123.6 is added to the Revenue and  
27 Taxation Code, to read:

28 41123.6. (a) Notwithstanding Article 7  
29 (commencing with Section 706.151) of Chapter 5 of Title  
30 9 of Part 2 of the Code of Civil Procedure, if the board  
31 determines upon receiving information from any person  
32 liable for any amount under this part that the person's  
33 employer withheld earnings for taxes pursuant to Section  
34 41123.5 and failed to remit the withheld earnings to the  
35 board, the employer shall be liable for the amount not  
36 remitted. The board's determination shall be based on  
37 payroll documents or other substantiating evidence  
38 furnished by the person liable for the tax.

39 (b) Upon its determination, the board shall mail notice  
40 to the employer at its last known address that upon failure

1 to remit the withheld earnings to the board within 15 days  
2 of the date of its notice to the employer, the employer  
3 shall be liable for that amount which was withheld and  
4 not remitted.

5 (c) If the employer fails to remit the amount withheld  
6 to the board upon notice, that amount for which the  
7 employer is liable shall be determined, collected, and  
8 paid as though it were a tax deficiency. The amount may  
9 be assessed at any time prior to seven years from the first  
10 day that the unremitted amount, in the aggregate, was  
11 first withheld. Interest shall accrue on that amount from  
12 the first day that the unremitted amount, in the  
13 aggregate, was first withheld.

14 (d) When the determination against the employer is  
15 final and due and payable, the person's account shall be  
16 immediately credited with an amount equal to that  
17 determined amount as though it were a payment  
18 received by the board on the first date that the  
19 unremitted amount, in the aggregate, was first withheld  
20 by the employer.

21 (e) Collection against the person liable for the tax is  
22 stayed for both the following amount and period:

23 (1) An amount equal to the amount determined by the  
24 board under subdivision (a).

25 (2) The earlier of the time the credit is applied to the  
26 person's account pursuant to subdivision (d) or the  
27 determination against the employer is withdrawn or  
28 revised and the person is notified by the board thereof.

29 (f) If under this section an amount that was withheld  
30 and not remitted to the board is final and due and payable  
31 by the employer and credited to the person's account, this  
32 remedy shall be the exclusive remedy for the person to  
33 recover that amount from the employer.

34 (g) This section shall apply to determinations made by  
35 the board on or after the effective date of the act adding  
36 this section.

37 ~~SEC. 51.1. Section 41099 is added to the Revenue and~~  
38 ~~Taxation Code, to read:~~

39 ~~41099. (a) Under regulations prescribed by the~~  
40 ~~board, if:~~

~~(1) A tax liability under this part was understated by failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.~~

~~(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.~~

~~(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.~~

~~(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.~~

~~(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.~~

~~(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.~~

~~(e) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid~~

~~1 tax or any deficiency, or any portion of either,  
2 attributable to any item for which relief is not available  
3 under subdivision (a), the board may relieve the other  
4 spouse of that liability.~~

5 SEC. 52. Section 41127.6 of the Revenue and Taxation  
6 Code is amended to read:

7 41127.6. (a) The board may, in its discretion, enter  
8 into a written installment payment agreement with a  
9 person for the payment of any taxes due, together with  
10 interest thereon and any applicable penalties, in  
11 installments over an agreed period. With mutual consent,  
12 the board and the taxpayer may alter or modify the  
13 agreement.

14 (b) Upon failure of a person to fully comply with the  
15 terms of an installment payment agreement with the  
16 board, the board may terminate the agreement by  
17 mailing a notice of termination to the person. The notice  
18 shall include an explanation of the basis for the  
19 termination and inform the person of his or her right to  
20 request an administrative review of the termination.  
21 Fifteen days after the mailing of the notice, the  
22 installment payment agreement shall be void, and the  
23 total amount of the tax, interest, and penalties due shall  
24 be immediately payable.

25 (c) The board shall establish procedures for an  
26 administrative review for persons requesting that review  
27 whose installment payment agreements are terminated  
28 under subdivision (b). The collection of taxes, interest,  
29 and penalties that are the subject of the terminated  
30 installment payment agreement may not be stayed  
31 during this administrative review process.

32 (d) Subdivision (b) shall not apply to any case where  
33 the board finds collection of the tax to be in jeopardy.

34 (e) Except in the case of fraud, if an installment  
35 payment agreement is entered into within 45 days from  
36 the date on which the board's notice of determination or  
37 redetermination becomes final, and the person complies  
38 with the terms of the installment payment agreement,  
39 the board shall relieve the penalty imposed pursuant to  
40 Section 41090.



1 SEC. 53. Section 41127.7 is added to the Revenue and  
2 Taxation Code, to read:

3 41127.7. The board, beginning no later than January  
4 1, 2001, shall provide each taxpayer who has an  
5 installment payment agreement in effect under Section  
6 41127.6 an annual statement setting forth the initial  
7 balance at the beginning of the year, the payments made  
8 during the year, and the remaining balance as of the end  
9 of the year.

10 SEC. 54. Section 41132 is added to the Revenue and  
11 Taxation Code, to read:

12 41132. (a) Except as otherwise provided by law, any  
13 person who is engaged in the business of preparing, or  
14 providing services in connection with the preparation of,  
15 returns under Chapter 4 (commencing with Section  
16 41050), or any person who for compensation prepares any  
17 such return for any other person, and who knowingly or  
18 recklessly does either of the following, shall be guilty of  
19 a misdemeanor, and, upon conviction thereof, shall be  
20 fined not more than one thousand dollars (\$1,000) or  
21 imprisoned no more than one year, or both, together with  
22 the costs of prosecution:

23 (1) Discloses any information furnished to him or her  
24 for, or in connection with, the preparation of the return.

25 (2) Uses that information for any purpose other than  
26 to prepare, or assist in preparing, the return.

27 (b) Subdivision (a) shall not apply to disclosure of  
28 information if that disclosure is made pursuant to the  
29 person's consent or pursuant to a subpoena, court order,  
30 or other compulsory legal process.

31 SEC. 55. Section 41169 of the Revenue and Taxation  
32 Code is amended to read:

33 41169. (a) Every taxpayer is entitled to be  
34 reimbursed for any reasonable fees and expenses related  
35 to a hearing before the board if all of the following  
36 conditions are met:

37 (1) The taxpayer files a claim for the fee and expenses  
38 with the board within one year of the date the decision of  
39 the board becomes final.



1 (2) The board, in its sole discretion, finds that the  
2 action taken by the board staff was unreasonable.

3 (3) The board decides that the taxpayer be awarded a  
4 specific amount of fees and expenses related to the  
5 hearing, in an amount determined by the board in its sole  
6 discretion.

7 (b) To determine whether the board staff has been  
8 unreasonable, the board shall consider whether the board  
9 staff has established that its position was substantially  
10 justified.

11 (c) The amount of reimbursed fees and expenses shall  
12 be limited to the following:

13 (1) Fees and expenses incurred after the date of the  
14 notice of determination, jeopardy determination, or a  
15 claim for refund.

16 (2) If the board finds that the staff was unreasonable  
17 with respect to certain issues but reasonable with respect  
18 to other issues, the amount of reimbursed fees and  
19 expenses shall be limited to those that relate to the issues  
20 where the staff was unreasonable.

21 (d) Any proposed award by the board pursuant to  
22 subdivision (a) shall be available as a public record for at  
23 least 10 days prior to the effective date of the award.

24 (e) The amendments to this section by the act adding  
25 this subdivision shall be operative for claims filed on or  
26 after January 1, 2000.

27 SEC. 56. Section 43157 of the Revenue and Taxation  
28 Code is amended to read:

29 43157. (a) If the board finds that a person's failure to  
30 make a timely return or payment is due to reasonable  
31 cause and circumstances beyond the person's control, and  
32 occurred notwithstanding the exercise of ordinary care  
33 and the absence of willful neglect, the person may be  
34 relieved of the penalty provided by Sections 43155 and  
35 43306.

36 (b) Except as provided in subdivision (c), any person  
37 seeking to be relieved of the penalty shall file with the  
38 board a statement, under penalty of perjury, setting forth  
39 the facts upon which he or she bases his or her claim for  
40 relief.

1 (c) The board shall establish criteria that provide for  
2 efficient resolution of requests for relief pursuant to this  
3 section.

4 SEC. 57. Section 43161 is added to the Revenue and  
5 Taxation Code, to read:

6 43161. (a) Under regulations prescribed by the  
7 board, if:

8 (1) A tax liability under this part was understated by  
9 failure to file a return required to be filed under this part,  
10 by the omission of an amount properly includable  
11 therein, or by erroneous deductions or credits claimed on  
12 a return, and the understatement of tax liability is  
13 attributable to one spouse; or any amount of the tax  
14 reported on a return was unpaid and the nonpayment of  
15 the reported tax liability is attributable to one spouse,

16 (2) The other spouse establishes that he or she did not  
17 know of, and had no reason to know of, that  
18 understatement or nonpayment, and

19 (3) Taking into account whether or not the other  
20 spouse significantly benefited directly or indirectly from  
21 the understatement or the nonpayment and taking into  
22 account all other facts and circumstances, it is inequitable  
23 to hold the other spouse liable for the deficiency in tax  
24 attributable to that understatement or nonpayment,  
25 then the other spouse shall be relieved of liability for tax  
26 (including interest, penalties, and other amounts) to the  
27 extent that the liability is attributable to that  
28 understatement or nonpayment of tax.

29 (b) For purposes of this section, the determination of  
30 the spouse to whom items of understatement or  
31 nonpayment are attributable shall be made without  
32 regard to community property laws.

33 (c) This section shall apply to all calendar quarters  
34 subject to the provisions of this part, but shall not apply  
35 to any calendar quarter that is more than five years from  
36 the final date on the board-issued determination, five  
37 years from the return due date for nonpayment on a  
38 return, or one year from the first contact with the spouse  
39 making a claim under this section, or that has been closed  
40 by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

SEC. 58. Section 43444.3 is added to the Revenue and Taxation Code, to read:

43444.3. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a feepayer or other person liable for any amount under this part that the person’s employer withheld earnings for taxes pursuant to Section 43444.2 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board’s determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

1 (d) When the determination against the employer is  
2 final and due and payable, the person's account shall be  
3 immediately credited with an amount equal to that  
4 determined amount as though it were a payment  
5 received by the board on the first date that the  
6 unremitted amount, in the aggregate, was first withheld  
7 by the employer.

8 (e) Collection against the person liable for the tax is  
9 stayed for both the following amount and period:

10 (1) An amount equal to the amount determined by the  
11 board under subdivision (a).

12 (2) The earlier of the time the credit is applied to the  
13 person's account pursuant to subdivision (d) or the  
14 determination against the employer is withdrawn or  
15 revised and the person is notified by the board thereof.

16 (f) If under this section an amount that was withheld  
17 and not remitted to the board is final and due and payable  
18 by the employer and credited to the person's account, this  
19 remedy shall be the exclusive remedy for the person to  
20 recover that amount from the employer.

21 (g) This section shall apply to determinations made by  
22 the board on or after the effective date of the act adding  
23 this section.

24 SEC. 59. Section 43448 of the Revenue and Taxation  
25 Code is amended to read:

26 43448. (a) The board may, in its discretion, enter into  
27 a written installment payment agreement with a person  
28 for the payment of any taxes due, together with interest  
29 thereon and any applicable penalties, in installments over  
30 an agreed period. With mutual consent, the board and the  
31 taxpayer may alter or modify the agreement.

32 (b) Upon failure of a person to fully comply with the  
33 terms of an installment payment agreement with the  
34 board, the board may terminate the agreement by  
35 mailing a notice of termination to the person. The notice  
36 shall include an explanation of the basis for the  
37 termination and inform the person of his or her right to  
38 request an administrative review of the termination.  
39 Fifteen days after the mailing of the notice, the  
40 installment payment agreement shall be void, and the

1 total amount of the tax, interest, and penalties due shall  
2 be immediately payable.

3 (c) The board shall establish procedures for an  
4 administrative review for persons requesting that review  
5 whose installment payment agreements are terminated  
6 under subdivision (b). The collection of taxes, interest,  
7 and penalties that are the subject of the terminated  
8 installment payment agreement may not be stayed  
9 during this administrative review process.

10 (d) Subdivision (b) shall not apply to any case where  
11 the board finds collection of the tax to be in jeopardy.

12 (e) Except in the case of fraud, if an installment  
13 payment agreement is entered into within 45 days from  
14 the date on which the board's notice of determination or  
15 redetermination becomes final, and the person complies  
16 with the terms of the installment payment agreement,  
17 the board shall relieve the penalty imposed pursuant to  
18 Section 43306.

19 SEC. 60. Section 43448.5 is added to the Revenue and  
20 Taxation Code, to read:

21 43448.5. The board, beginning no later than January  
22 1, 2001, shall provide each taxpayer who has an  
23 installment payment agreement in effect under Section  
24 43448 an annual statement setting forth the initial balance  
25 at the beginning of the year, the payments made during  
26 the year, and the remaining balance as of the end of the  
27 year.

28 SEC. 61. Section 43452.1 is added to the Revenue and  
29 Taxation Code, to read:

30 43452.1. (a) The limitation period specified in  
31 Section 43452 shall be suspended during any period of a  
32 person's life that the person is financially disabled.

33 (b) (1) For purposes of subdivision (a), a person is  
34 financially disabled if the person is unable to manage his  
35 or her financial affairs by reason of medically  
36 determinable physical or mental impairment of the  
37 person which can be expected to result in death or which  
38 has lasted or can be expected to last for a continuous  
39 period of not less than 12 months. A person shall not be  
40 considered to have an impairment unless proof of the

1 existence thereof is furnished in the form and manner as  
2 the board may require.

3 (2) A person shall not be treated as financially disabled  
4 during any period that the person's spouse or any other  
5 person is authorized to act on behalf of the person in  
6 financial matters.

7 (c) This section applies to periods of disability  
8 commencing before, on, or after the effective date of the  
9 act adding this section, but does not apply to any claim for  
10 refund that (without regard to this section) is barred by  
11 the operation or rule of law, including res judicata, as of  
12 the effective date of the act adding this section.

13 SEC. 62. Section 43506 is added to the Revenue and  
14 Taxation Code, to read:

15 43506. (a) Except as otherwise provided by law, any  
16 person who is engaged in the business of preparing, or  
17 providing services in connection with the preparation of,  
18 returns under Chapter 3 (commencing with Section  
19 43151), or any person who for compensation prepares any  
20 such return for any other person, and who knowingly or  
21 recklessly does either of the following, shall be guilty of  
22 a misdemeanor, and, upon conviction thereof, shall be  
23 fined not more than one thousand dollars (\$1,000) or  
24 imprisoned no more than one year, or both, together with  
25 the costs of prosecution:

26 (1) Discloses any information furnished to him or her  
27 for, or in connection with, the preparation of the return.

28 (2) Uses that information for any purpose other than  
29 to prepare, or assist in preparing, the return.

30 (b) Subdivision (a) shall not apply to disclosure of  
31 information if that disclosure is made pursuant to the  
32 person's consent or pursuant to a subpoena, court order,  
33 or other compulsory legal process.

34 SEC. 63. Section 43520 of the Revenue and Taxation  
35 Code is amended to read:

36 43520. (a) Every taxpayer is entitled to be  
37 reimbursed for any reasonable fees and expenses related  
38 to a hearing before the board if all of the following  
39 conditions are met:

1 (1) The taxpayer files a claim for the fees and expenses  
2 with the board within one year of the date the decision of  
3 the board becomes final.

4 (2) The board, in its sole discretion, finds that the  
5 action taken by the board staff was unreasonable.

6 (3) The board decides that the taxpayer be awarded a  
7 specific amount of fees and expenses related to the  
8 hearing, in an amount determined by the board in its sole  
9 discretion.

10 (b) To determine whether the board staff has been  
11 unreasonable, the board shall consider whether the board  
12 staff has established that its position was substantially  
13 justified.

14 (c) The amount of reimbursed fees and expenses shall  
15 be limited to the following:

16 (1) Fees and expenses incurred after the date of the  
17 notice of determination, jeopardy determination, or a  
18 claim for refund.

19 (2) If the board finds that the staff was unreasonable  
20 with respect to certain issues but reasonable with respect  
21 to other issues, the amount of reimbursed fees and  
22 expenses shall be limited to those that relate to the issues  
23 where the staff was unreasonable.

24 (d) Any proposed award by the board pursuant to  
25 subdivision (a) shall be available as a public record for at  
26 least 10 days prior to the effective date of the award.

27 (e) The amendments to this section by the act adding  
28 this subdivision shall be operative for claims filed on or  
29 after January 1, 2000.

30 SEC. 64. Section 45155 of the Revenue and Taxation  
31 Code is amended to read:

32 45155. (a) If the board finds that a person's failure to  
33 make a timely report or return or payment is due to  
34 reasonable cause and circumstances beyond the person's  
35 control, and occurred notwithstanding the exercise of  
36 ordinary care and the absence of willful neglect, the  
37 person may be relieved of the penalty provided by  
38 Sections 45153 and 45306.

39 (b) Except as provided in subdivision (c), any person  
40 seeking to be relieved of the penalty shall file with the



1 board a statement, under penalty of perjury, setting forth  
2 the facts upon which he or she bases his or her claim for  
3 relief.

4 (c) The board shall establish criteria that provide for  
5 efficient resolution of requests for relief pursuant to this  
6 section.

7 SEC. 65. Section 45158 is added to the Revenue and  
8 Taxation Code, to read:

9 45158. (a) Under regulations prescribed by the  
10 board, if:

11 (1) A tax liability under this part was understated by  
12 failure to file a return required to be filed under this  
13 part, by the omission of an amount properly includable  
14 therein, or by erroneous deductions or credits claimed  
15 on a return, and the understatement of tax liability is  
16 attributable to one spouse, or any amount of the tax  
17 reported on a return was unpaid and the nonpayment  
18 of the reported tax liability is attributable to one spouse,

19 (2) The other spouse establishes that he or she did  
20 not know of, and had no reason to know of, that  
21 understatement or nonpayment, and

22 (3) Taking into account whether or not the other  
23 spouse significantly benefited directly or indirectly  
24 from the understatement or the nonpayment and  
25 taking into account all other facts and circumstances,  
26 it is inequitable to hold the other spouse liable for the  
27 deficiency in tax attributable to that understatement or  
28 nonpayment,

29 then the other spouse shall be relieved of liability for tax  
30 (including interest, penalties, and other amounts) to the  
31 extent that the liability is attributable to that  
32 understatement or nonpayment of tax.

33 (b) For purposes of this section, the determination of  
34 the spouse to whom items of understatement or  
35 nonpayment are attributable shall be made without  
36 regard to community property laws.

37 (c) This section shall apply to all calendar quarters  
38 subject to the provisions of this part, but shall not apply  
39 to any calendar quarter that is more than five years from  
40 the final date on the board-issued determination, five



1 years from the return due date for nonpayment on a  
2 return, or one year from the first contact with the spouse  
3 making a claim under this section, or that has been closed  
4 by res judicata, whichever is later.

5 (d) For purposes of paragraph (2) of subdivision (a),  
6 “reason to know” means whether or not a reasonably  
7 prudent person would have had reason to know of the  
8 understatement or nonpayment.

9 (e) Under procedures prescribed by the board, if,  
10 taking into account all the facts and circumstances, it is  
11 inequitable to hold the other spouse liable for any unpaid  
12 tax or any deficiency (or any portion of either)  
13 attributable to any item for which relief is not available  
14 under subdivision (a), the board may relieve the other  
15 spouse of that liability.

16 SEC. 66. Section 45605.5 is added to the Revenue and  
17 Taxation Code, to read:

18 45605.5. (a) Notwithstanding Article 7  
19 (commencing with Section 706.151) of Chapter 5 of Title  
20 9 of Part 2 of the Code of Civil Procedure, if the board  
21 determines upon receiving information from a feepayer  
22 or other person liable for any amount under this part that  
23 the person’s employer withheld earnings for taxes  
24 pursuant to Section 45605 and failed to remit the withheld  
25 earnings to the board, the employer shall be liable for the  
26 amount not remitted. The board’s determination shall be  
27 based on payroll documents or other substantiating  
28 evidence furnished by the person liable for the tax.

29 (b) Upon its determination, the board shall mail notice  
30 to the employer at its last known address that upon failure  
31 to remit the withheld earnings to the board within 15 days  
32 of the date of its notice to the employer, the employer  
33 shall be liable for that amount which was withheld and  
34 not remitted.

35 (c) If the employer fails to remit the amount withheld  
36 to the board upon notice, that amount for which the  
37 employer is liable shall be determined, collected, and  
38 paid as though it were a tax deficiency. The amount may  
39 be assessed at any time prior to seven years from the first  
40 date that the unremitted amount, in the aggregate, was

1 first withheld. Interest shall accrue on that amount from  
2 the first day that the unremitted amount, in the  
3 aggregate, was first withheld.

4 (d) When the determination against the employer is  
5 final and due and payable, the person's account shall be  
6 immediately credited with an amount equal to that  
7 determined amount as though it were a payment  
8 received by the board on the first date that the  
9 unremitted amount, in the aggregate, was first withheld  
10 by the employer.

11 (e) Collection against the person liable for the tax is  
12 stayed for both the following amount and period:

13 (1) An amount equal to the amount determined by the  
14 board under subdivision (a).

15 (2) The earlier of the time the credit is applied to the  
16 person's account pursuant to subdivision (d) or the  
17 determination against the employer is withdrawn or  
18 revised and the person is notified by the board thereof.

19 (f) If under this section an amount that was withheld  
20 and not remitted to the board is final and due and payable  
21 by the employer and credited to the person's account, this  
22 remedy shall be the exclusive remedy for the person to  
23 recover that amount from the employer.

24 (g) This section shall apply to determinations made by  
25 the board on or after the effective date of the act adding  
26 this section.

27 SEC. 67. Section 45609 of the Revenue and Taxation  
28 Code is amended to read:

29 45609. (a) The board may, in its discretion, enter into  
30 a written installment payment agreement with a person  
31 for the payment of any fees due, together with interest  
32 thereon and any applicable penalties, in installments over  
33 an agreed period. With mutual consent, the board and the  
34 fee payer may alter or modify the agreement.

35 (b) Upon failure of a person to fully comply with the  
36 terms of an installment payment agreement with the  
37 board, the board may terminate the agreement by  
38 mailing a notice of termination to the person. The notice  
39 shall include an explanation of the basis for the  
40 termination and inform the person of his or her right to

1 request an administrative review of the termination.  
2 Fifteen days after the mailing of the notice, the  
3 installment payment agreement shall be void, and the  
4 total amount of the fee, interest, and penalties due shall  
5 be immediately payable.

6 (c) The board shall establish procedures for an  
7 administrative review for persons requesting that review  
8 whose installment payment agreements are terminated  
9 under subdivision (b). The collection of fees, interest, and  
10 penalties that are the subject of the terminated  
11 installment payment agreement may not be stayed  
12 during this administrative review process.

13 (d) Subdivision (b) shall not apply to any case where  
14 the board finds collection of the fee to be in jeopardy.

15 (e) Except in the case of fraud, if an installment  
16 payment agreement is entered into within 45 days from  
17 the date on which the board's notice of determination or  
18 redetermination becomes final, and the person complies  
19 with the terms of the installment payment agreement,  
20 the board shall relieve the penalty imposed pursuant to  
21 Section 45306.

22 SEC. 68. Section 45609.5 is added to the Revenue and  
23 Taxation Code, to read:

24 45609.5. The board, beginning no later than January  
25 1, 2001, shall provide each taxpayer who has an  
26 installment payment agreement in effect under Section  
27 45609 an annual statement setting forth the initial balance  
28 at the beginning of the year, the payments made during  
29 the year, and the remaining balance as of the end of the  
30 year.

31 SEC. 69. Section 45652.1 is added to the Revenue and  
32 Taxation Code, to read:

33 45652.1. (a) The limitation period specified in  
34 Section 45652 shall be suspended during any period of a  
35 person's life that the person is financially disabled.

36 (b) (1) For purposes of subdivision (a), a person is  
37 financially disabled if the person is unable to manage his  
38 or her financial affairs by reason of medically  
39 determinable physical or mental impairment of the  
40 person which can be expected to result in death or which

1 has lasted or can be expected to last for a continuous  
2 period of not less than 12 months. A person shall not be  
3 considered to have an impairment unless proof of the  
4 existence thereof is furnished in the form and manner as  
5 the board may require.

6 (2) A person shall not be treated as financially disabled  
7 during any period that the person's spouse or any other  
8 person is authorized to act on behalf of the person in  
9 financial matters.

10 (c) This section applies to periods of disability  
11 commencing before, on, or after the effective date of the  
12 act adding this section, but does not apply to any claim for  
13 refund that (without regard to this section) is barred by  
14 the operation or rule of law, including res judicata, as of  
15 the effective date of the act adding this section.

16 SEC. 70. Section 45855.5 is added to the Revenue and  
17 Taxation Code, to read:

18 45855.5. (a) Except as otherwise provided by law,  
19 any person who is engaged in the business of preparing,  
20 or providing services in connection with the preparation  
21 of, returns under Chapter 3 (commencing with Section  
22 45151), or any person who for compensation prepares any  
23 such return for any other person, and who knowingly or  
24 recklessly does either of the following, shall be guilty of  
25 a misdemeanor, and, upon conviction thereof, shall be  
26 fined not more than one thousand dollars (\$1,000) or  
27 imprisoned no more than one year, or both, together with  
28 the costs of prosecution:

29 (1) Discloses any information furnished to him or her  
30 for, or in connection with, the preparation of the return.

31 (2) Uses that information for any purpose other than  
32 to prepare, or assist in preparing, the return.

33 (b) Subdivision (a) shall not apply to disclosure of  
34 information if that disclosure is made pursuant to the  
35 person's consent or pursuant to a subpoena, court order,  
36 or other compulsory legal process.

37 SEC. 71. Section 45865 of the Revenue and Taxation  
38 Code is amended to read:

39 45865. (a) Every fee payer is entitled to be  
40 reimbursed for any reasonable fees and expenses related

1 to a hearing before the board if all of the following  
2 conditions are met:

3 (1) The fee payer files a claim for the fee and expenses  
4 with the board within one year of the date the decision of  
5 the board becomes final.

6 (2) The board, in its sole discretion, finds that the  
7 action taken by the board staff was unreasonable.

8 (3) The board decides that the fee payer be awarded  
9 a specific amount of fees and expenses related to the  
10 hearing, in an amount determined by the board in its sole  
11 discretion.

12 (b) To determine whether the board staff has been  
13 unreasonable, the board shall consider whether the board  
14 staff has established that its position was substantially  
15 justified.

16 (c) The amount of reimbursed fees and expenses shall  
17 be limited to the following:

18 (1) Fees and expenses incurred after the date of the  
19 notice of determination, jeopardy determination, or a  
20 claim for refund.

21 (2) If the board finds that the staff was unreasonable  
22 with respect to certain issues but reasonable with respect  
23 to other issues, the amount of reimbursed fees and  
24 expenses shall be limited to those that relate to the issues  
25 where the staff was unreasonable.

26 (d) Any proposed award by the board pursuant to  
27 subdivision (a) shall be available as a public record for at  
28 least 10 days prior to the effective date of the award.

29 (e) The amendments to this section by the act adding  
30 this subdivision shall be operative for claims filed on or  
31 after January 1, 2000.

32 SEC. 72. Section 46156 of the Revenue and Taxation  
33 Code is amended to read:

34 46156. (a) If the board finds that a person's failure to  
35 make a timely return or payment is due to reasonable  
36 cause and circumstances beyond the person's control, and  
37 occurred notwithstanding the exercise of ordinary care  
38 and the absence of willful neglect, the person may be  
39 relieved of the penalty provided by Sections 46154, 46251,  
40 and 46356.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution for requests for relief pursuant to this section.

SEC. 73. Section 46159 is added to the Revenue and Taxation Code, to read:

46159. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse, or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall not apply to all calendar quarters subject to the provisions of this part, but shall not apply

1 to any calendar quarter that is more than five years from  
2 the final date on the board-issued determination, five  
3 years from the return due date for nonpayment on a  
4 return, or one year from the first contact with the spouse  
5 making a claim under this section, or that has been closed  
6 by res judicata, whichever is later.

7 (d) For purposes of paragraph (2) of subdivision (a),  
8 “reason to know” means whether or not a reasonably  
9 prudent person would have had reason to know of the  
10 understatement or nonpayment.

11 (e) Under procedures ~~described~~ *prescribed* by the  
12 board, if, taking into account all the facts and  
13 circumstances, it is inequitable to hold the other spouse  
14 liable for any unpaid tax or any deficiency (or any portion  
15 of either) attributable to any item for which relief is not  
16 available under subdivision (a), the board may relieve  
17 the other spouse of that liability.

18 SEC. 74. Section 46407 is added to the Revenue and  
19 Taxation Code, to read:

20 46407. (a) Notwithstanding Article 7 (commencing  
21 with Section 706.151) of Chapter 5 of Title 9 of Part 2 of  
22 the Code of Civil Procedure, if the board determines,  
23 upon receiving information from a fee payer or other  
24 person liable for any amount under this part, that the  
25 person’s employer withheld earnings for taxes pursuant  
26 to Section 46406 and failed to remit the withheld earnings  
27 to the board, the employer shall be liable for the amount  
28 not remitted. The board’s determination shall be based  
29 on payroll documents or other substantiating evidence  
30 furnished by the person liable for the tax.

31 (b) Upon its determination, the board shall mail notice  
32 to the employer at its last known address that upon failure  
33 to remit the withheld earnings to the board within 15 days  
34 of the date of its notice to the employer, the employer  
35 shall be liable for that amount which was withheld and  
36 not remitted.

37 (c) If the employer fails to remit the amount withheld  
38 to the board upon notice, that amount for which the  
39 employer is liable shall be determined, collected, and  
40 paid as though it were a tax deficiency. The amount may



1 be assessed at any time prior to seven years from the first  
2 day that the unremitted amount, in the aggregate, was  
3 first withheld. Interest shall accrue on that amount from  
4 the first day that the unremitted amount, in the  
5 aggregate, was first withheld.

6 (d) When the determination against the employer is  
7 final and due and payable, the person's account shall be  
8 immediately credited with an amount equal to that  
9 determined amount as though it were a payment  
10 received by the board on the first date that the  
11 unremitted amount, in the aggregate, was first withheld  
12 by the employer.

13 (e) Collection against the person liable for the tax is  
14 stayed for both the following amount and period:

15 (1) An amount equal to the amount determined by the  
16 board under subdivision (a).

17 (2) The earlier of the time the credit is applied to the  
18 person's account pursuant to subdivision (d) or the  
19 determination against the employer is withdrawn or  
20 revised and the person is notified by the board thereof.

21 (f) If under this section an amount that was withheld  
22 and not remitted to the board is final and due and payable  
23 by the employer and credited to the person's account, this  
24 remedy shall be the exclusive remedy for the person to  
25 recover that amount from the employer.

26 (g) This section shall apply to determinations made by  
27 the board on or after the effective date of the act adding  
28 this section.

29 SEC. 75. Section 46464 of the Revenue and Taxation  
30 Code is amended to read:

31 46464. (a) The board may, in its discretion, enter into  
32 a written installment payment agreement with a person  
33 for the payment of any fees due, together with interest  
34 thereon and any applicable penalties, in installments over  
35 an agreed period. With mutual consent, the board and the  
36 fee payer may alter or modify the agreement.

37 (b) Upon failure of a person to fully comply with the  
38 terms of an installment payment agreement with the  
39 board, the board may terminate the agreement by  
40 mailing a notice of termination to the person. The notice



1 shall include an explanation of the basis for the  
2 termination and inform the person of his or her right to  
3 request an administrative review of the termination.  
4 Fifteen days after the mailing of the notice, the  
5 installment payment agreement shall be void, and the  
6 total amount of the fees, interest, and penalties due shall  
7 be immediately payable.

8 (c) The board shall establish procedures for an  
9 administrative review for persons requesting that review  
10 whose installment payment agreements are terminated  
11 under subdivision (b). The collection of fees, interest, and  
12 penalties that are the subject of the terminated  
13 installment payment agreement may not be stayed  
14 during this administrative review process.

15 (d) Subdivision (b) shall not apply to any case where  
16 the board finds collection of the fee to be in jeopardy.

17 (e) Except in the case of fraud, if an installment  
18 payment agreement is entered into within 45 days from  
19 the date on which the board's notice of determination or  
20 redetermination become final, and the person complies  
21 with the terms of the installment payment agreement,  
22 the board shall relieve the penalty imposed pursuant to  
23 Section 46356.

24 SEC. 76. Section 46464.5 is added to the Revenue and  
25 Taxation Code, to read:

26 46464.5. The board, beginning no later than January  
27 1, 2001, shall provide each taxpayer who has an  
28 installment payment agreement in effect under Section  
29 46464 an annual statement setting forth the initial balance  
30 at the beginning of the year, the payments made during  
31 the year, and the remaining balance as of the end of the  
32 year.

33 SEC. 77. Section 46502.1 is added to the Revenue and  
34 Taxation Code, to read:

35 46502.1. (a) The limitation period specified in  
36 Section 46502 shall be suspended during any period of the  
37 person's life that the person is financially disabled.

38 (b) (1) For purposes of subdivision (a), a person is  
39 financially disabled if the person is unable to manage his  
40 or her financial affairs by reason of medically

1 determinable physical or mental impairment of the  
2 person which can be expected to result in death or which  
3 has lasted or can be expected to last for a continuous  
4 period of not less than 12 months. A person shall not be  
5 considered to have an impairment unless proof of the  
6 existence thereof is furnished in the form and manner as  
7 the board may require.

8 (2) A person shall not be treated as financially disabled  
9 during any period that the person's spouse of any other  
10 person is authorized to act on behalf of the person in  
11 financial matters.

12 (c) This section applies to periods of disability  
13 commencing before, on, or after the effective date of the  
14 act adding this section, but does not apply to any claim for  
15 refund that (without regard to this section) is barred by  
16 the operation or rule of law, including res judicata, as of  
17 the effective date of the act adding this section.

18 SEC. 78. Section 46606 is added to the Revenue and  
19 Taxation Code, to read:

20 46606. (a) Except as otherwise provided by law, any  
21 person who is engaged in the business of preparing, or  
22 providing services in connection with the preparation of,  
23 returns under Chapter 3 (commencing with Section  
24 46151), or any person who for compensation prepares any  
25 such return for any other person, and who knowingly or  
26 recklessly does either of the following, shall be guilty of  
27 a misdemeanor, and, upon conviction thereof, shall be  
28 fined not more than one thousand dollars (\$1,000) or  
29 imprisoned no more than one year, or both, together with  
30 the costs of prosecution:

31 (1) Discloses any information furnished to him or her  
32 for, or in connection with, the preparation of the return.

33 (2) Uses that information for any purpose other than  
34 to prepare, or assist in preparing, the return.

35 (b) Subdivision (a) shall not apply to disclosure of  
36 information if that disclosure is made pursuant to the  
37 person's consent or pursuant to a subpoena, court order,  
38 or other compulsory legal process.

39 SEC. 79. Section 46620 of the Revenue and Taxation  
40 Code is amended to read:

1 46620. (a) Every fee payer is entitled to be  
2 reimbursed for any reasonable fees and expenses related  
3 to a hearing before the board if all of the following  
4 conditions are met:

5 (1) The fee payer files a claim for the fee and expenses  
6 with the board within one year of the date the decision of  
7 the board becomes final.

8 (2) The board, in its sole discretion, finds that the  
9 action taken by the board staff was unreasonable.

10 (3) The board decides that the fee payer be awarded  
11 a specific amount of fees and expenses related to the  
12 hearing, in an amount determined by the board in its sole  
13 discretion.

14 (b) To determine whether the board staff has been  
15 unreasonable, the board shall consider whether the board  
16 staff has established that its position was substantially  
17 justified.

18 (c) The amount of reimbursed fees and expenses shall  
19 be limited to the following:

20 (1) Fees and expenses incurred after the date of the  
21 notice of determination, jeopardy determination, or a  
22 claim for refund.

23 (2) If the board finds that the staff was unreasonable  
24 with respect to certain issues but reasonable with respect  
25 to other issues, the amount of reimbursed fees and  
26 expenses shall be limited to those that relate to the issues  
27 where the staff was unreasonable.

28 (d) Any proposed award by the board pursuant to this  
29 section shall be available as a public record for at least 10  
30 days prior to the effective date of the award.

31 (e) The amendments to this section by the act adding  
32 this subdivision shall be operative for claims filed on or  
33 after January 1, 2000.

34 SEC. 80. Section 50112.2 of the Revenue and Taxation  
35 Code is amended to read:

36 50112.2. (a) If the board finds that a person's failure  
37 to make a timely report or payment is due to reasonable  
38 cause and circumstances beyond the person's control, and  
39 occurred notwithstanding the exercise of ordinary care  
40 and the absence of willful neglect, the person may be

1 relieved of the penalty provided by Sections 50112 and  
2 50119.

3 (b) Except as provided in subdivision (c), any person  
4 seeking to be relieved of the penalty shall file with the  
5 board a statement, under penalty of perjury, setting forth  
6 the facts upon which he or she bases his or her claim for  
7 relief.

8 (c) The board shall establish criteria that provide for  
9 efficient resolution of requests for relief pursuant to this  
10 section.

11 SEC. 81. Section 50112.6 is added to the Revenue and  
12 Taxation Code, to read:

13 50112.6. (a) Under regulations prescribed by the  
14 board, if:

15 (1) A tax liability under this part was understated by  
16 failure to file a return required to be filed under this part,  
17 by the omission of an amount properly includable  
18 therein, or by erroneous deductions or credits claimed on  
19 a return, and the understatement of tax liability is  
20 attributable to one spouse, or any amount of the tax  
21 reported on a return was unpaid and the nonpayment of  
22 the reported tax liability is attributable to one spouse,

23 (2) The other spouse establishes that he or she did not  
24 know of, and had no reason to know of, that  
25 understatement or nonpayment, and

26 (3) Taking into account whether or not the other  
27 spouse significantly benefited directly or indirectly from  
28 the understatement or the nonpayment and taking into  
29 account all other facts and circumstances, it is inequitable  
30 to hold the other spouse liable for the deficiency in tax  
31 attributable to that understatement or nonpayment,  
32 then the other spouse shall be relieved of liability for tax  
33 (including interest, penalties, and other amounts) to the  
34 extent that the liability is attributable to that  
35 understatement or nonpayment of tax.

36 (b) For purposes of this section, the determination of  
37 the spouse to whom items of understatement or  
38 nonpayment are attributable shall be made without  
39 regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section, or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

SEC. 82. Section 50136.5 is added to the Revenue and Taxation Code, to read:

50136.5. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a feepayer or other person liable for any amount under this part that the person’s employer withheld earnings for taxes pursuant to Section 50136 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board’s determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the

1 employer is liable shall be determined, collected, and  
2 paid as though it were a tax deficiency. The amount may  
3 be assessed at any time prior to seven years from the first  
4 day that the unremitted amount, in the aggregate, was  
5 first withheld. Interest shall accrue on that amount from  
6 the first day that the unremitted amount, in the  
7 aggregate, was first withheld.

8 (d) When the determination against the employer is  
9 final and due and payable, the person's account shall be  
10 immediately credited with an amount equal to that  
11 determined amount as though it were a payment  
12 received by the board on the first date that the  
13 unremitted amount, in the aggregate, was first withheld  
14 by the employer.

15 (e) Collection against the person liable for the tax is  
16 stayed for both the following amount and period:

17 (1) An amount equal to the amount determined by the  
18 board under subdivision (a).

19 (2) The earlier of the time the credit is applied to the  
20 person's account pursuant to subdivision (d) or the  
21 determination against the employer is withdrawn or  
22 revised and the person is notified by the board thereof.

23 (f) If under this section an amount that was withheld  
24 and not remitted to the board is final and due and payable  
25 by the employer and credited to the person's account, this  
26 remedy shall be the exclusive remedy for the person to  
27 recover that amount from the employer.

28 (g) This section shall apply to determinations made by  
29 the board on or after the effective date of the act adding  
30 this section.

31 SEC. 83. Section 50138.6 of the Revenue and Taxation  
32 Code is amended to read:

33 50138.6. (a) The board may, in its discretion, enter  
34 into a written installment payment agreement with a  
35 person for the payment of any fees due, together with  
36 interest thereon and any applicable penalties, in  
37 installments over an agreed period. With mutual consent,  
38 the board and the fee payer may alter or modify the  
39 agreement.

1 (b) Upon failure of a person to fully comply with the  
2 terms of an installment payment agreement with the  
3 board, the board may terminate the agreement by  
4 mailing a notice of termination to the person. The notice  
5 shall include an explanation of the basis for the  
6 termination and inform the person of his or her right to  
7 request an administrative review of the termination.  
8 Fifteen days after the mailing of the notice, the  
9 installment payment agreement shall be void, and the  
10 total amount of the fees, interest, and penalties due shall  
11 be immediately payable.

12 (c) The board shall establish procedures for an  
13 administrative review for persons requesting that review  
14 whose installment payment agreements are terminated  
15 under subdivision (b). The collection of fees, interest, and  
16 penalties that are the subject of the terminated  
17 installment payment agreement may not be stayed  
18 during this administrative review process.

19 (d) Subdivision (b) shall not apply to any case where  
20 the board finds collection of the fee to be in jeopardy.

21 (e) Except in the case of fraud, if an installment  
22 payment agreement is entered into within 45 days from  
23 the date on which the board's notice of determination or  
24 redetermination becomes final, and the person complies  
25 with the terms of the installment payment agreement,  
26 the board shall relieve the penalty imposed pursuant to  
27 Section 50119.

28 SEC. 84. Section 50138.7 is added to the Revenue and  
29 Taxation Code, to read:

30 50138.7. The board, beginning no later than January  
31 1, 2001, shall provide each taxpayer who has an  
32 installment payment agreement in effect under Section  
33 50138.6 an annual statement setting forth the initial  
34 balance at the beginning of the year, the payments made  
35 during the year, and the remaining balance as of the end  
36 of the year.

37 SEC. 85. Section 50140.1 is added to the Revenue and  
38 Taxation Code, to read:



1 50140.1. (a) The limitation period specified in  
2 Section 50140 shall be suspended during any period of a  
3 person's life that the person is financially disabled.

4 (b) (1) For purposes of subdivision (a), a person is  
5 financially disabled if the person is unable to manage his  
6 or her financial affairs by reason of medically  
7 determinable physical or mental impairment of the  
8 person which can be expected to result in death or which  
9 has lasted or can be expected to last for a continuous  
10 period of not less than 12 months. A person shall not be  
11 considered to have an impairment unless proof of the  
12 existence thereof is furnished in the form and manner as  
13 the board may require.

14 (2) A person shall not be treated as financially disabled  
15 during any period that the person's spouse or any other  
16 person is authorized to act on behalf of the person in  
17 financial matters.

18 (c) This section applies to a period of disability  
19 commencing before, on, or after the effective date of the  
20 act adding this section, but does not apply to any claim for  
21 refund that (without regard to this section) is barred by  
22 the operation or rule of law, including res judicata, as of  
23 the effective date of the act adding this section.

24 SEC. 86. Section 50155.5 is added to the Revenue and  
25 Taxation Code, to read:

26 50155.5. (a) Except as otherwise provided by law,  
27 any person who is engaged in the business of preparing,  
28 or providing services in connection with the preparation  
29 of, returns under Chapter 3 (commencing with Section  
30 50109), or any person who for compensation prepares any  
31 such return for any other person, and who knowingly or  
32 recklessly does either of the following, shall be guilty of  
33 a misdemeanor, and, upon conviction thereof, shall be  
34 fined not more than one thousand dollars (\$1,000) or  
35 imprisoned no more than one year, or both, together with  
36 the costs of prosecution:

37 (1) Discloses any information furnished to him or her  
38 for, or in connection with, the preparation of the return.

39 (2) Uses that information for any purpose other than  
40 to prepare, or assist in preparing, the return.



(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 87. Section 50156.9 of the Revenue and Taxation Code is amended to read:

50156.9. (a) Every fee payer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The fee payer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the fee payer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refunds.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

1 SEC. 88. Section 55047 is added to the Revenue and  
2 Taxation Code, to read:

3 55047. (a) Under regulations prescribed by the  
4 board, if:

5 (1) A tax liability under this part was understated by  
6 failure to file a return required to be filed under this  
7 part, by the omission of an amount properly includable  
8 therein, or by erroneous deductions or credits claimed  
9 on a return, and the understatement of tax liability is  
10 attributable to one spouse, or any amount of the tax  
11 reported on a return was unpaid and the nonpayment  
12 of the reported tax liability is attributable to one spouse,

13 (2) The other spouse establishes that he or she did  
14 not know of, and had no reason to know of, that  
15 understatement or nonpayment, and

16 (3) Taking into account whether or not the other  
17 spouse significantly benefited directly or indirectly  
18 from the understatement or the nonpayment and  
19 taking into account all other facts and circumstances,  
20 it is inequitable to hold the other spouse liable for the  
21 deficiency in tax attributable to that understatement or  
22 nonpayment,

23 then the other spouse shall be relieved of liability for tax  
24 (including interest, penalties, and other amounts) to the  
25 extent that the liability is attributable to that  
26 understatement or nonpayment of tax.

27 (b) For purposes of this section, the determination of  
28 the spouse to whom items of understatement or  
29 nonpayment are attributable shall be made without  
30 regard to community property laws.

31 (c) This section shall apply to all calendar quarters  
32 subject to the provisions of this part, but shall not apply  
33 to any calendar quarter that is more than five years from  
34 the final date on the board-issued determination, five  
35 years from the return due date for nonpayment on a  
36 return, or one year from the first contact with the spouse  
37 making a claim under this section, or that has been closed  
38 by res judicata, whichever is later.

39 (d) For purposes of paragraph (2) of subdivision (a),  
40 “reason to know” means whether or not a reasonably

1 prudent person would have had reason to know of the  
2 understatement or nonpayment.

3 (e) Under procedures prescribed by the board, if,  
4 taking into account all the facts and circumstances, it is  
5 inequitable to hold the other spouse liable for unpaid tax  
6 or any deficiency (or any portion of either) attributable  
7 to any item for which relief is not available under  
8 subdivision (a), the board may relieve the other spouse  
9 of that liability.

10 SEC. 89. Section 55044 of the Revenue and Taxation  
11 Code is amended to read:

12 55044. (a) If the board finds that a person's failure to  
13 make a timely return or payment is due to reasonable  
14 cause and circumstances beyond the person's control, and  
15 occurred notwithstanding the exercise of ordinary care  
16 and the absence of willful neglect, the person may be  
17 relieved of the penalty provided by Sections 55042 and  
18 55086.

19 (b) Except as provided in subdivision (c), any person  
20 seeking to be relieved of the penalty shall file with the  
21 board a statement, under penalty of perjury, setting forth  
22 the facts upon which he or she bases his or her claim for  
23 relief.

24 (c) The board shall establish criteria that provide for  
25 efficient resolution of requests for relief pursuant to this  
26 section.

27 SEC. 90. Section 55205.5 is added to the Revenue and  
28 Taxation Code, to read:

29 55205.5. (a) Notwithstanding Article 7  
30 (commencing with Section 706.151) of Chapter 5 of Title  
31 9 of Part 2 of the Code of Civil Procedure, if the board  
32 determines upon receiving information from a fee payer  
33 or other person liable for any amount under this part that  
34 the person's employer withheld earnings for taxes  
35 pursuant to Section 55205 and failed to remit the withheld  
36 earnings to the board, the employer shall be liable for the  
37 amount not remitted. The board's determination shall be  
38 based on payroll documents or other substantiating  
39 evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 91. Section 55209 of the Revenue and Taxation Code is amended to read:

1 55209. (a) The board may, in its discretion, enter into  
2 a written installment payment agreement with a person  
3 for the payment of any fees due, together with interest  
4 thereon and any applicable penalties, in installments over  
5 an agreed period. With mutual consent, the board and the  
6 fee payer may alter or modify the agreement.

7 (b) Upon failure of a person to fully comply with the  
8 terms of an installment payment agreement with the  
9 board, the board may terminate the agreement by  
10 mailing a notice of termination to the person. The notice  
11 shall include an explanation of the basis for the  
12 termination and inform the person of his or her right to  
13 request an administrative review of the termination.  
14 Fifteen days after the mailing of the notice, the  
15 installment payment agreement shall be void, and the  
16 total amount of the fees, interest, and penalties due shall  
17 be immediately payable.

18 (c) The board shall establish procedures for an  
19 administrative review for persons requesting that review  
20 whose installment payment agreements are terminated  
21 under subdivision (b). The collection of fees, interest, and  
22 penalties that are the subject of the terminated  
23 installment payment agreement may not be stayed  
24 during this administrative review process.

25 (d) Subdivision (b) shall not apply to any case where  
26 the board finds collection of the fee to be in jeopardy.

27 (e) Except in the case of fraud, if an installment  
28 payment agreement is entered into within 45 days from  
29 the date on which the board's notice of determination or  
30 redetermination becomes final, and the person complies  
31 with the terms of the installment payment agreement,  
32 the board shall relieve the penalty imposed pursuant to  
33 Section 55086.

34 SEC. 92. Section 55209.5 is added to the Revenue and  
35 Taxation Code, to read:

36 55209.5. The board, beginning no later than January  
37 1, 2001, shall provide each taxpayer who has an  
38 installment payment agreement in effect under Section  
39 55209 an annual statement setting forth the initial balance  
40 at the beginning of the year, the payments made during

1 the year, and the remaining balance as of the end of the  
2 year.

3 SEC. 93. Section 55222.1 is added to the Revenue and  
4 Taxation Code, to read:

5 55222.1. (a) The limitation period specified in  
6 Section 55222 shall be suspended during any period of a  
7 person's life that the person is financially disabled.

8 (b) (1) For purposes of subdivision (a), a person is  
9 financially disabled if the person is unable to manage his  
10 or her financial affairs by reason of medically  
11 determinable physical or mental impairment of the  
12 person which can be expected to result in death or which  
13 has lasted or can be expected to last for a continuous  
14 period of not less than 12 months. A person shall not be  
15 considered to have an impairment unless proof of the  
16 existence thereof is furnished in the form and manner as  
17 the board may require.

18 (2) A person shall not be treated as financially disabled  
19 during any period that the person's spouse or any other  
20 person is authorized to act on behalf of the person in  
21 financial matters.

22 (c) This section applies to periods of disability  
23 commencing before, on, or after the effective date of the  
24 act adding this section, but does not apply to any claim for  
25 refund that (without regard to this section) is barred by  
26 the operation or rule of law, including res judicata, as of  
27 the effective date of the act adding this section.

28 SEC. 94. Section 55305 is added to the Revenue and  
29 Taxation Code, to read:

30 55305. (a) Except as otherwise provided by law, any  
31 person who is engaged in the business of preparing, or  
32 providing services in connection with the preparation of,  
33 returns under Chapter 3 (commencing with Section  
34 55041), or any person who for compensation prepares any  
35 such return for any other person, and who knowingly or  
36 recklessly does either of the following shall be guilty of a  
37 misdemeanor, and, upon conviction thereof, shall be  
38 fined not more than one thousand dollars (\$1,000) or  
39 imprisoned no more than one year, or both, together with  
40 the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 95. Section 55330 of the Revenue and Taxation Code is amended to read:

55330. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fees and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was found unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 96. Section 60209 of the Revenue and Taxation Code is amended to read:

60209. (a) If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 60207, 60301, 60338, and 60355.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 97. Section 60213 is added to the Revenue and Taxation Code, to read:

60213. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by failure to file a return required to be filed under this part, by the omission of any amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse, or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the



deficiency in tax attributable to that understatement or nonpayment,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section, or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold either spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

SEC. 98. Section 60408 is added to the Revenue and Taxation Code, to read:

60408. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines receiving information from a supplier or other person liable for any amount under this part that the person’s employer withheld earnings for taxes pursuant Section 60407 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board’s determination shall be based on

1 payroll documents or other substantiating evidence  
2 furnished by the person liable for the tax.

3 (b) Upon its determination, the board shall mail notice  
4 to the employer at its last known address that upon failure  
5 to remit the withheld earnings to the board within 15 days  
6 of the date of its notice to the employer, the employer  
7 shall be liable for that amount which was withheld and  
8 not remitted.

9 (c) If the employer fails to remit the amount withheld  
10 to the board upon notice, that amount for which the  
11 employer is liable shall be determined, collected, and  
12 paid as though it were a tax deficiency. The amount may  
13 be assessed at any time prior to seven years from the first  
14 day that the unremitted amount, in the aggregate, was  
15 first withheld. Interest shall accrue on that amount from  
16 the first day that the unremitted amount, in the  
17 aggregate, was first withheld.

18 (d) When the determination against the employer is  
19 final and due and payable, the person's account shall be  
20 immediately credited with an amount equal to that  
21 determined amount as though it were a payment  
22 received by the board on the first date that the  
23 unremitted amount, in the aggregate, was first withheld  
24 by the employer.

25 (e) Collection against the person liable for the tax is  
26 stayed for both the following amount and period:

27 (1) An amount equal to the amount determined by the  
28 board under subdivision (a).

29 (2) The earlier of the time the credit is applied to the  
30 person's account pursuant to subdivision (d) or the  
31 determination against the employer is withdrawn or  
32 revised and the person is notified by the board thereof.

33 (f) If under this section an amount that was withheld  
34 and not remitted to the board is final and due and payable  
35 by the employer and credited to the person's account, this  
36 remedy shall be the exclusive remedy for the person to  
37 recover that amount from the employer.

38 (g) This section shall apply to determinations made by  
39 the board on or after the effective date of the act adding  
40 this section.

1 SEC. 99. Section 60493 of the Revenue and Taxation  
2 Code is amended to read:

3 60493. (a) The board may, in its discretion, enter into  
4 a written installment payment agreement with a person  
5 for the payment of any taxes due, together with interest  
6 thereon and any applicable penalties, in installments over  
7 an agreed period. With mutual consent, the board and the  
8 taxpayer may alter or modify the agreement.

9 (b) Upon failure of a person to fully comply with the  
10 terms of an installment payment agreement with the  
11 board, the board may terminate the agreement by  
12 mailing a notice of termination to the person. The notice  
13 shall include an explanation of the basis for the  
14 termination and inform the person of his or her right to  
15 request an administrative review of the termination.  
16 Fifteen days after the mailing of the notice, the  
17 installment payment agreement shall be void, and the  
18 total amount of the tax, interest, and penalties due shall  
19 be immediately payable.

20 (c) The board shall establish procedures for an  
21 administrative review for persons requesting that review  
22 whose installment payment agreements are terminated  
23 under subdivision (b). The collection of taxes, interest,  
24 and penalties that are the subject of the terminated  
25 installment payment agreement may not be stayed  
26 during this administrative review process.

27 (d) Subdivision (b) shall not apply to any case where  
28 the board finds collection of the tax to be in jeopardy.

29 (e) Except in the case of fraud, if an installment  
30 payment agreement is entered into within 45 days from  
31 the date on which the board's notice of determination or  
32 redetermination becomes final, and the person complies  
33 with the terms of the installment payment agreement,  
34 the board shall relieve the penalty imposed pursuant to  
35 Section 60355.

36 SEC. 100. Section 60493.5 is added to the Revenue and  
37 Taxation Code, to read:

38 60493.5. The board, beginning no later than January  
39 1, 2001, shall provide each taxpayer who has an  
40 installment payment agreement in effect under Section

1 60493 an annual statement setting forth the initial balance  
2 at the beginning of the year, the payments made during  
3 the year, and the remaining balance as of the end of the  
4 year.

5 SEC. 101. Section 60522.1 is added to the Revenue and  
6 Taxation Code, to read:

7 60522.1. (a) The limitation period specified in  
8 Section 60522 shall be suspended during any period of a  
9 person's life that the person is financially disabled.

10 (b) (1) For purposes of subdivision (a), a person is  
11 financially disabled if the person is unable to manage his  
12 or her financial affairs by reason of medically  
13 determinable physical or mental impairment of the  
14 person which can be expected to result in death or which  
15 has lasted or can be expected to last for a continuous  
16 period of not less than 12 months. A person shall not be  
17 considered to have an impairment unless proof of the  
18 existence thereof is furnished in the form and manner as  
19 the board may require.

20 (2) A person shall not be treated as financially disabled  
21 during any period that the person's spouse or any other  
22 person is authorized to act on behalf of the person in  
23 financial matters.

24 (c) This section applies to periods of disability  
25 commencing before, on, or after the effective date of the  
26 act adding this section, but does not apply to any claim for  
27 refund that (without regard to this section) is barred by  
28 the operation or rule of law, including res judicata, as of  
29 the effective date of the act adding this section.

30 SEC. 102. Section 60609.5 is added to the Revenue and  
31 Taxation Code, to read:

32 60609.5. (a) Except as otherwise provided by law,  
33 any person who is engaged in the business of preparing,  
34 or providing services in connection with the preparation  
35 of, returns under Chapter 6 (commencing with Section  
36 60201), or any person who for compensation prepares any  
37 such return for any other person, and who knowingly or  
38 recklessly does either of the following, shall be guilty of  
39 a misdemeanor, and, upon conviction thereof, shall be  
40 fined not more than one thousand dollars (\$1,000) or

1 imprisoned no more than one year, or both, together with  
2 the costs of prosecution:

3 (1) Discloses any information furnished to him or her  
4 for, or in connection with, the preparation of the return.

5 (2) Uses that information for any purpose other than  
6 to prepare, or assist in preparing, the return.

7 (b) Subdivision (a) shall not apply to disclosure of  
8 information if that disclosure is made pursuant to the  
9 person's consent or pursuant to a subpoena, court order,  
10 or other compulsory legal process.

11 SEC. 103. Section 60630 of the Revenue and Taxation  
12 Code is amended to read:

13 60630. (a) Every taxpayer is entitled to be  
14 reimbursed for any reasonable fees and expenses related  
15 to a hearing before the board if all of the following  
16 conditions are met:

17 (1) The taxpayer files a claim for the fee and expenses  
18 with the board within one year of the date the decision of  
19 the board becomes final.

20 (2) The board, in its sole discretion, finds that the  
21 action taken by the board staff was unreasonable.

22 (3) The board decides that the taxpayer shall be  
23 awarded a specific amount of fees and expenses related  
24 to the hearing, in an amount determined by the board in  
25 its sole discretion.

26 (b) To determine whether the board staff has been  
27 unreasonable, the board shall consider whether the board  
28 staff has established that its position was substantially  
29 justified.

30 (c) The amount of reimbursed fees and expenses shall  
31 be limited to the following:

32 (1) Fees and expenses incurred after the date of the  
33 notice of determination, jeopardy determination, or a  
34 claim for refund.

35 (2) If the board finds that the staff was unreasonable  
36 with respect to certain issues but reasonable with respect  
37 to other issues, the amount of reimbursed fees and  
38 expenses shall be limited to those that relate to the issues  
39 where the staff was unreasonable.

1 (d) The board's proposed award under this section  
2 shall be available as a public record for at least 10 days  
3 prior to the effective date of the award.

4 (e) The amendments to this section by the act adding  
5 this subdivision shall be operative for claims filed on or  
6 after January 1, 2000.

7 SEC. 104. No reimbursement is required by this act  
8 pursuant to Section 6 of Article XIII B of the California  
9 Constitution because the only costs that may be incurred  
10 by a local agency or school district will be incurred  
11 because this act creates a new crime or infraction,  
12 eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section  
14 17556 of the Government Code, or changes the definition  
15 of a crime within the meaning of Section 6 of Article  
16 XIII B of the California Constitution.

